IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.2060 of 2013,
M.P.Nos.1 and 2 of 2013

M/s.Divyam Spinner
Rep. by its Managing Partner
T.S.Venkatasubramaniam
No.5/146, B.K.Thotaiyapatti Road,
Rajapalayam, Virudhunagar District. ... Appellant

-Vs-

1.The General Manager,
District Industrial Centre,
Virudhunagar District,Virudhunagar.

2.The Assistant Commissioner,
Commercial Taxes, Sivakasi.

3.The Commercial Tax Officer I
Rajapalayam. ... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in Rev.Application No.101 of 2013 dated 6.8.2013.

Rev.Application No.101/2013 in W.P.No.8074/1999:

Review application filed against the order dated 02.02.2001 in the Writ Petition, filed under Article 226 of the constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent D.Dis. 235/A2/99 dated 23.03.1999 and quash the same and direct the 2nd respondent to permit the petitioner to execute the agreement for availing the Sales Tax deferral scheme for 5 years as per the order of the 1st respondent as per the eligibile certificate No. 1D/SJ/96/97/A2 dated 25.02.1997.

For Appellant : Mr.ARL.Sundaresan
Senior Counsel
for Ms.AL.Ganthimathi

For Respondents: Ms.Narmada Sampath
Additional Advocate General
Assisted by Ms.G.Dhanamadhri
Govt.Advocate (Tax)

J U D G M E N T

[Judgment of the Court was delivered by
K.K. SASIDHARAN,J.]

The respondents sanctioned the benefits of Sales Tax Deferral Scheme for five years to the appellant. Since agreement was not executed, the benefit was denied. The writ petition challenging the order dated 23 March 1999 cancelling the Eligibility Certificate was dismissed by the Writ Court. The related appeal was dismissed by the Division Bench by judgment, dated 22 February 2002 in W.A.No.1052 of 2001. The Special Leave Petition filed against the judgment in W.A.No.1052 of 2009 was dismissed as withdrawn with liberty to file a review petition before the learned single Judge. The Review Petition filed by the appellant pursuant to the liberty given by the Supreme Court was dismissed by the learned single Judge on the ground that no purpose would be served by considering the petition after the expiry of 17 years and more particularly, after the period of Sales Tax Deferral Scheme. The order is under challenge at the instance of the appellant.

2. The learned Senior Counsel for the appellant contended that the learned single Judge ought to have decided the review petition on merits without dismissing it on the ground of efflux of time. According to the learned Senior Counsel, in view of the dismissal of the review petition, the respondents have made a claim for interest for the entire period and the same would cause considerable hardship to the appellant.

3. We have also heard the learned Additional Advocate General on behalf of the respondents.

4. The appellant submitted application for conferring the benefits of Sales Tax Deferral Scheme for a period of five years pursuant to the Government Order in G.O.Ms.No.500 Industries (MIG-II) dated 14 May 1990. The District Industries Centre, Virudhunagar, issued Eligibility Certificate dated 25 February 1997 declaring the eligibility of the appellant to avail the Sales Tax Deferral Scheme. There is a condition incorporated under the Scheme that the beneficiary must execute an unconditional undertaking agreeing to pay the entire tax after the deferral period. Since no such undertaking was given by the appellant, the District Industries Centre by order dated 23 March 1999 cancelled the Certificate given earlier. The said order was put in issue before the Writ Court in W.P.No.8074 of

1999. The appellant lost the writ petition, intra court appeal and finally the Special Leave Petition.

5. The appellant filed a review petition on the strength of the liberty given by the Supreme Court. Even though the period expired by efflux of time, still the learned single Judge ought to have considered the merits of the matter, in view of the liberty granted by the Supreme Court. The issue raised would not become academic after the expiry of the deferral period for the reason that the appellant would be made liable to pay interest for the entire tax amount based on the Deferral Scheme.

6. The appellant was also at fault. Even after the expiry of the period of Deferral Scheme, attempt was not made by the appellant to discharge the tax liability. It was only under the said circumstances, the respondents directed the appellant to pay interest.

7. The factual matrix clearly indicates that the appellant failed to execute the agreement and that was the reason for cancelling the Eligibility Certificate. We are therefore of the view that there is no ground made out by the appellant to interfere in the order dated 23 March 1999.

8. The other question is as to whether the respondents are correct in claiming interest for the entire period.

9. The review petition was filed on 31 October 2002 pursuant to the liberty granted by the Supreme Court. It is a matter of record that even when review petition was filed, attempt was not made to pay the admitted tax. We are therefore of the view that the appellant is liable to pay interest from 6 August 2013, the date on which the review petition was dismissed by the learned single Judge.

10. We direct the appellant to pay the entire tax amount along with interest at 6% calculated from 6 August 2013. The amount should be paid along with interest as indicated above within a period of three months from the date of receipt of a copy of this judgment.

11. The intra court appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To
1.The General Manager,
District Industrial Centre,
Virudhunagar District,Virudhunagar.

2.The Assistant Commissioner,
Commercial Taxes, Sivakasi.

3.The Commercial Tax Officer I
Rajapalayam.

+1 CC to Mrs. A.L. Gandhimathi, Advocate sr 19484.
+1 CC to Spl. Govt Pleader sr 19769.

W.A No.2060 of 2013

SAI(CO)
SP(09/04/2018)