In the High Court of Judicature at Madras

Dated : 18.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.13908 to 13910 of 2018 &
WMP.Nos.16442 to 16444 of 2018

M/s.Sree Saraswathi Mills Ltd., rep.by
its Director Thiru.N.Shanmugasundaram ...Petitioner

Vs

The State Tax Officer, (Erstwhile
Commercial Tax Officer) Tiruttani
Assessment Circle, No.94,
MPS Salai, Tiruttani-631209. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the respondent in CST/55514/1993-94, CST/55514/1998-99 and CST/55514/1999-2000 - the impugned orders dated 11.4.2018 and quash the same as arbitrary and illegal.

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For Petitioner : Mr.S.Ramanan
For Respondent : Mr.M.Hariharan, AGP

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COMMON ORDER

Heard both. By consent, the writ petitions are taken up for joint disposal.

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2. The petitioner is aggrieved by the impugned assessment orders passed by the respondent demanding payment of interest for the belated payment of arrears of tax payable under the provisions of the Central Sales Tax Act, 1956 for the assessment years 1993-94, 1998-99 and 1999-2000.

3. The reason for approaching this Court is that the petitioner was declared as a sick industrial company by the Board for Industrial and Financial Reconstruction (hereinafter called the BIFR) and that the case was taken up as Case No.73 of 2003. The BIFR, by proceedings dated 17.2.2015, ordered a revival scheme and appointed M/s.Federal Bank as the Operating Agency. In the revival scheme, there is a specific direction for waiver of interest and penalty by the State and the Central Governments. In accordance with the said scheme, the Operating Agency namely M/s.Federal Bank has to settle the tax arrears. This is admitted by the respondent in the para wise instructions given by him to the Special Government Pleader dated 13.6.2018. In the said letter, the respondent would state that he was not aware of the fact that the BIFR sanctioned a scheme, that this was not brought to his notice by the petitioner company and that therefore, he had no other option except to confirm the proposal made earlier. The respondent would also state that in the event of approval of rehabilitation scheme by the BIFR, to which, the Commercial Taxes Department is a party, they will take up the matter with the Authorities of the Government for waiver.

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4. Thus, partly the mistake lies with the petitioner in not diligently prosecuting the matter before the respondent by filing a proper representation along with a copy of the revival scheme sanctioned by the BIFR dated 17.2.2015. As admitted by the respondent, the power to grant waiver vests with the Government. The Commercial Taxes Department having been a party to the revival scheme sanctioned by the BIFR, the respondent is bound by the directives contained therein. Therefore, the respondent should not proceed with the impugned notice and should await instructions from the Government.

5. Accordingly, the writ petitions are disposed of with a direction to the petitioner to send a representation to the Government, along with the revival scheme sanctioned by the BIFR through proper channel i.e. through the respondent, within a period of 15 days from the date of receipt of a copy of this order, in order to facilitate the process of obtaining waiver of interest for the belated payment of tax. The petitioner is also directed to enclose appropriate letters from the Operating Agency namely M/s.Federal Bank. On receipt of the representation, the respondent shall forward the same to the Government with necessary inputs. The Competent Authority, who is entitled to grant waiver, shall afford an opportunity of personal hearing to the authorized representative of the petitioner and pass appropriate orders on merits and in accordance with law. Till orders are passed by the Competent

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T.S.SIVAGNANAM,J

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Authority in the claim for waiver of interest on the belated payment of taxes, the impugned orders shall be kept in abeyance. Since M/s.Federal Bank has been appointed as the Operating Agency, they shall also be put on notice by the Competent Authority while considering the claim for waiver. No costs. Consequently, the connected WMPs are closed.

18.6.2018

Internet : Yes

To
The State Tax Officer, (Erstwhile Commercial Tax Officer) Tiruttani Assessment Circle, No.94, MPS Salai, Tiruttani-631209.

WP.Nos.13908 to 13910 of 2018&
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