IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.36094 of 2007
&
M.P.No.1 of 2007

Orient Extrusions Pvt. Ltd.,
represented by its Managing Director
R.M.Swamy
24, Duraisamy Street
T.Nagar, Chennai- 600 017 ... Petitioner

Vs.

1.The Deputy Commercial Tax Officer
Sowcarpet II Assessment Circle
Chennai- 600 079

2.The Joint Commissioner (CT)
Chennai (North) Division
Greams Road
Chennai - 600 006 ...Respondents

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records on the files of the second respondent herein in RC 11723/04/C3 dated 14.11.2007 and quash the same and directing the second respondent to consider and pass orders as per Section 7(c) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2006 insofar as it relates to the accrual of interest upto 31.03.2001.

For Petitioner : Mr.N.Inbarajan
For Respondents : Ms.G.Dhanamadhri
Government Advocate

ORDER

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondents.

2. The petitioner has filed this writ petition challenging an order passed by the second respondent dated 14.11.2007

rejecting the application filed by the petitioner under the provisions of Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2009. The reason for rejection of the petition is on a ground that the petitioner has not paid the interest at one and half percent per month on such amount for the first three months of default and at two percent per month on such amount for the subsequent period of default. It may not be necessary for this Court to test the correctness of the findings rendered by the first respondent in the impugned order on account of the following facts.

3.The petitioner, while filing the application, had paid the entire tax upto the period 31.03.2001. With regard to the payment of interest, the petitioner paid 25% of the amount and furnished a Bank Guarantee for Rs.8,00,000/-. The petitioner vide representation dated 01.02.2007 has stated that furnishing Bank Guarantee is as good as payment of tax/interest and it can be encashed at any time. With the above submission, the petitioner requested the first respondent to consider their application for the grant of waiver of interest as mentioned in the communication.

4. I find that in the impugned order, the averments set out by the petitioner, though has been referred to, has not been dealt with nor any reasons have been given to reject the said representation. After the impugned order was passed, the second respondent has encashed the Bank Guarantee and recovered a sum of Rs.7,96,100/-. This information has been furnished to the learned Government Advocate by the second respondent vide parawise comments dated 05.03.2008. In the said parawise comments the second respondent has stated that the petitioner has filed a revision petition before the second respondent dated 02.10.2006 against the orders of the Deputy Commercial Tax officer, Sowcarpet II Assessment Circle dated 30.06.2016 levying penal interest of Rs.10,64,870/- and since the first respondent has not passed any orders on the levy of penal interest, the second respondent has proceeded to recover the amount by encashing the Bank Guarantee. In my considered view, the petitioner cannot be vexed twice.

5. Firstly, the second respondent should have disposed of the revision petition, which is stated to have been filed on 02.10.2006. Without doing so, it would be unreasonable on the part of the second respondent to reject the Samadhan Application. In any event, as of now, the entire amount has been collected by the Department, because the Bank Guarantee has been encashed. Therefore, this Court is of the considered view that the following order meets the ends of justice.

In the result, the writ petition is allowed and the impugned order dated 14.11.2007 is set aside and the matter is remanded to the second respondent for fresh consideration. If the revision petition filed by the petitioner against the order passed by the Deputy Commercial Tax Officer, Sowcarpet II Assessment circle, has not been disposed of till date, then the second respondent shall dispose of the same within a period of four weeks from the date of receipt of a copy of this order. In the event that the revision petition has been disposed of, the second respondent shall take up the application filed by the petitioner under the Samadhan Scheme and deal with the matter on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commercial Tax Officer
Sowcarpet II Assessment Circle
Chennai- 600 079

2.The Joint Commissioner (CT)
Chennai (North) Division
Greams Road
Chennai - 600 006

+1cc to Mr.N.INBARAJAN, Advocate, S.R.No. 49744

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BS(CO)
TR(07/08/2018)