IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.No.2567 of 2018 and
C.M.P.No.20807 of 2018

IG 3 Infra Limited
Represented by its Managing Director
Mrs.Unnamalai Thiagarajan
'Chennai One', Pallavaram-Thoraipakkam 200 Feet Road,
Thoraipakkam, Chennai-600 097. ...Appellant/Petitioner

Vs

1. State of Tamil Nadu,
   Rep. By its Chief Secretary to Government,
   [Chairman-Committee for Review and Development of SEZ]
   Fort St.George, Chennai - 600 009.

2. The Commissioner,
   Corporation of Chennai,
   Ribbon Buildings, Chennai - 600 003.

3. The Assistant Revenue Officer,
   Zone - 14,
   Corporation of Chennai,
   No.6/64, Puzhuthivakkam Main Road,
   Chennai - 600 091.

4. The Development Commissioner [SEZ],
   Madras Export Processing Zone,
   Tambaram, Chennai - 600 045.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 14.09.2018 in W.P.No.9650 of 2014.

W.P.No.9650 of 2014 : Petition under Article 226 of the Constitution of India praying this court to call for the entire records in connection with the impugned Final Assessment/ Notice No.10 vide Order No.M/14/189/13-14/0061 of the 3rd Respondent dated 18.03.2014 and quash the same and consequently forbear the Respondents from making and levying property tax to the petitioners property in Chennai One Pallavaram-Thoraipakkam 200

Feet Road Thoraipakkam Chennai 600 097 at Zone-XIV Ward - 189.

For Appellant : Mr.Xavier Arulraj
Senior Counsel for
Mr.R.Sivaraman

For Respondents : Mr.T.C.Gopalakrishan
Standing Counsel for RR 2 &3

J U D G M E N T
[Judgment of the Court was made by
T.S.SIVAGNANAM.,J.]

This appeal is directed against the order passed in W.P.No.9650 of 2014 dated 14.09.2018. The appellant filed the writ petition challenging the Final Assessment Notice in Form No.10 dated 18.03.2014 issued by the 3rd respondent, Assistant Revenue Officer, Zone- 14, Corporation of Chennai. By the said notice, the 3rd respondent determined the annual value of the appellant's building at Rs.3,09,29,606/- and computed the half yearly property tax at Rs.34,02,257/-. The assessment was with retrospective effect for the period from Second half yearly 2007-08.

2. The appellant challenged the said notice by filing a writ petition in W.P.No.9650 of 2014. The said writ petition was entertained and an order of interim stay was granted. The respondent/Corporation filed counter affidavit along with a petition to vacate the stay. This Court by order dated 24.03.2015 modified the stay order by directing the appellant to pay a sum of Rs.2.00 Crores (Rupees Two Crores only) in two installments, the first of which was payable on or before 30.04.2015 and the second instalment on or before 31.05.2015. It appears that the petitioner has complied with the said condition within the time permitted. Ultimately, the writ petition was taken up for disposal and by order dated 14.09.2018, the Writ petition was dismissed and the learned Single Judge had issued consequential directions and for proper appreciation, paragraph 16 of the order is quoted here under:-

"16.In view of the legal principles settled above, the following orders are passed:

(i)The relief, as such, sought for in the present Writ petition stands rejected;

(ii)The Writ petitioner-Company is directed to pay the arrears of property tax amount of Rs.2,72,18,056/- for the assessment of the year 2008 to 2011 and Rs.2,76,31,598/- for the assessment of the year 2011 - 2018, within a period of eight weeks from the date of receipt of a copy of this order;

iii) In the event of failure on the part of the writ petitioner in paying the arrears of property tax amount, within the time limit stipulated above, the respondent Chennai Corporation is directed to initiate appropriate action to recover the entire arrears of property tax amount by following the procedures contemplated under law.

3. Mr.Xavier Arulraj, learned Senior Counsel appearing for the appellant would contend that the appellant is a Special Economic Zone and earlier they were under the jurisdiction of Pallikaranai Panchayat and no property tax was either levied or collected from them and after the area was annexed to the limits of Chennai City Municipal Corporation pursuant to the notification issued by the Government dated 13.01.2010, the respondent Corporation demanded property tax from the appellant. The appellant represented to the Corporation authorities that as per the Special Economic Zone Policy framed by the Government in the year 2003, they are exempted from levy of tax by the local bodies.

4. The third respondent by notice dated 28.01.2013 called for details from the appellant such as the documents confirming the ownership of the property, Encumbrance Certificate, Sanctioned Plan copy, Floor wise details, usage and date of occupation, etc., The appellant would state that the details called for were fully furnished to the third respondent. Pursuant to which, Form No.6 dated 21.09.2013 was issued proposing to fix half yearly property tax at Rs.34,02,260/- with effect from 2nd half yearly 2007-08. This was followed by a restraint notice dated 30.10.2013 demanding property tax at Rs.4,42,29,380/-, that is from 2nd half yearly 2007-08 to 2nd half yearly 2013-14.

5. The appellant objected to the assessment by their representation dated 07.11.2013 stating that the assessment is on the higher side and requested to reduce the tax to the extent of actual building area liable for assessment. Further, they requested that the levy of tax from the date of merger of the Pallikaranai Panchayat with Corporation alone be taken. This was followed by various other notices and the appellant by representation dated 22.01.2014 addressed to the third respondent enclosing the Special Economic Zone Policy of the Government of Tamil Nadu, 2003 stated that they are exempted from levy of property tax.

6.The third respondent issued notice in Form No.10 dated 18.03.2014 and confirmed the proposal made in Form No.6 and determined the half-yearly property tax. The appellant submitted a representation dated 25.03.2014 addressed to the Commissioner of the respondent Corporation once again re-iterating that they are exempted from levy of property tax. Immediately thereafter the appellant filed the present writ petition, in which, initially an order of stay was granted and subsequently, the interim stay was modified with a direction to pay a sum of Rs.2.00 crores and ultimately, the writ petition has been dismissed.

7. It is the submission of the learned Senior Counsel that levy of property tax by the respondent Corporation during the period when the property was within the jurisdiction of Pallikkarani Panchayat, is without jurisdiction. It is further submitted that levy of property tax for the subsequent period by the Chennai Corporation is also without jurisdiction since the appellant is a Special Economic Zone and as per the policy of the Government, they are exempted from levy of property tax. The third submission of the learned Senior Counsel is that no proper opportunity was granted to the appellant before the issuance of Form No.10 dated 18.03.2014 since no details were given as to how the annual value of the building has been computed and even in Form No.6 dated 21.09.2013, no details were given and there was no Annexure to the said Form No.6 Notice. On the above grounds, the learned Senior Counsel seeks for entertaining this appeal and prays to set aside the order passed in the writ petition.

8.Mr.T.C.Gopalakrishnan, learned Standing Counsel for the respondent Corporation would submit that the assessment of property tax by the respondent Corporation even during the period when it was within the jurisdiction of the Pallikkaranai Panchayat is wholly within the jurisdiction of the respondent in the light of Section 414-A of the Chennai City Municipal Corporation Act as amended. It is further submitted that if there has been escapement of assessment, Corporation is entitled to levy and collect property tax even during the period when property was within the jurisdiction of Pallikkaranai Panchayat. Further, it is submitted that no exemption is provided under Section 101 of the Chennai City Municipal Corporation Act, for cases like that of the appellant and the Writ Court was fully justified in dismissing the writ petition and directing arrears to be collected.

9.We have heard the learned counsel for the parties.

10.The policy of the Government of Tamil Nadu regarding Special Economic Zone was framed in the year 2003. Subsequently, the Government of Tamil Nadu has enacted Tamil Nadu Special Economic Zone (Special Provisions) Act, 2005 (Tamil Nadu Act 18/2005) to make certain special provisions in relation to

Special Economic Zones in the State of Tamil Nadu and for matters connected there to and explained there to.

11. The learned Senior Counsel for the appellant referred to Section 12 of Act 18 of 2005 which deals with the exemption to every Developer or entrepreneur. We have gone through Section 12 and there is no mention of any exemption from levy of property tax. After the Tamil Nadu Act 18 of 2005 has been enacted, it is deemed that the policy framed by the Government of Tamil Nadu with regard to Special Economic Zone in 2003 stands superseded. Furthermore, from a perusal of Section 12, it is seen that exemptions are from levy of taxes such as Sales Tax etc., if goods are made to carry on the authorised operations by the developer or entrepreneur. Other clauses namely Clause (b) to (h) in Section 12(1) does not speak about property tax. Thus, the appellant cannot fall back on Tamil Nadu Act 18 of 2005 claiming exemption. Section 101 of the Chennai City Municipal Corporation Act, 1919 speaks of general exemptions and the appellant will not fall within any one of the clauses (a) to (i) under Section 101. This position is not disputed by the appellant.

12.The learned Senior Counsel has referred to Section 99 of the Chennai City Municipal Corporation Act. Sub-section (1) of Section 99 states that if the council by a resolution determines that a property tax shall be levied, such tax shall be levied on all buildings and lands within the city save those exempted by under this Act or any other law. The submission of the learned Senior Counsel is that under the Special Economic Zone Policy 2003, there is an exemption from levy of property tax. We have pointed out in the preceding paragraphs that the policy stands superseded by Act 18 of 2005 and Section 12 of Act 18 of 2005 does not speak about any exemption of property tax in respect of Special Economic Zones. Therefore, in our considered view, Section 99 would be of no assistance to the case of the appellant.

13. As pointed out by the learned Standing Counsel for the respondents, if at all the appellant has to seek for exemption, the only power available is under Section 137-A of the Chennai City Municipal Corporation Act. In terms of the said section, with the sanction of the State Government, the Council may exempt any person or class of persons wholly or in part from the payment of any tax. Thus, unless and until, the Government grants sanction, the Council of the respondent Corporation has no power to exempt the appellant from payment of property tax. Thus, in our considered view, the writ petition could not have been entertained on the grounds raised by the appellant. However, we agree with the final conclusion arrived by the Writ

Court in dismissing the writ petition, but for different reasons, which we have assigned in the preceding paragraphs. The learned Senior Counsel submitted that the appellant have already moved the Government for grant of exemption and in this regard referred to the representation dated 03.04.2012. On a perusal of the said representation, we find that it is not relating to the claim for exemption from property tax.

14.The learned Senior Counsel further contended that the assessment has been done without furnishing full details and therefore, the appellant was not in a position to furnish proper objections. As already pointed out, the appellant by their representation dated 07.11.2013 stated that the assessment is on the higher side and requested for reduction of the same to the actual built up area and to levy tax from the date of merger of Pallikaranai Panchayat with the Corporation of Chennai. Thus, the appellant have been understood that they are liable to pay property tax and cannot escape from the liability. However, we are of the view that the appellant should be assessed to the correct rate of tax for which definitely, the respondent Corporation should furnish the particulars as to how they computed the annual value of the building. To that aspect, we are agreeable with the submissions made on behalf of the appellant.

15. Be it noted that the appellant has paid Rs.2 Crores pursuant to the interim order granted by this Court. The writ court while dismissing the writ petition in Paragraph 16 of the impugned order (referred above) stated that arrears of property tax payable for the assessment year 2008 to 2011 is Rs.2,72,18,056/- and the arrears payable for the assessment year 2011 to 2018 is Rs.2,76,31,598/-.

16. Since the appellant has already paid Rs.2 crores, we slightly modify the directions issued in paragraph 16 as follows:-

(i) The payment of arrears of property tax for the period 2008-11 shall remain stayed on account of the appellant having already paid a sum of Rs.2 crores pursuant to the interim order passed by this Court. With regard to the assessment for the year 2011-18 is concerned, since we are convinced that full particulars were not furnished by the respondent Corporation to the appellant as to how the annual value has been computed, we direct the third respondent to furnish the calculation sheet within one week from the date of receipt of a copy of this judgment and on receipt of the calculation sheet, the appellant is directed to submit their objections within a period of one week thereafter. After receipt of the objections, the authorized representative of the appellant should be given an opportunity of personal hearing and fresh assessment order be passed. Till such time, the demand for the period from 2011-18 shall remain stayed.

ii) So far as the demand for the period 2008-11 is concerned, the same shall be kept in abeyance on account of payment of Rs.2 crores. However, this cannot be kept in abeyance eternally and we propose to fix a time limit. The appellant is directed to submit representation to the Government requesting for exemption and such representation should be given within 15 days from the date of receipt of a copy of this judgment. We fix an outer time limit of 60 days from the date of submission of representation to obtain orders of exemption by the appellant, failing which, the order of stay granted by this Court shall stand vacated automatically and the appellant would be liable to pay arrears for the period 2008-11 after giving credit to the sum of Rs.2 crores paid by the appellant.

17. In the result, the writ appeal stands dismissed. The order passed in the writ petition is confirmed but for different reasons which we have assigned in the preceding paragraphs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Chief Secretary to Government,
State of Tamil Nadu,
[Chairman-Committee for Review and Development of SEZ]
Fort St.George, Chennai - 600 009.

2. The Commissioner,
Corporation of Chennai,
Ribbon Buildings, Chennai - 600 003.

3. The Assistant Revenue Officer,
Zone - 14,
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No.6/64, Puzhuthivakkam Main Road,
Chennai - 600 091.

4. The Development Commissioner [SEZ],
Madras Export Processing Zone,
Tambaram, Chennai - 600 045.

+1cc to Mr.T.C.Gopalakrishnan, Advocate SR.No.79446

+1cc to Mr.R.Sivaraman, Advocate SR.No.79624

WA.No.2567 of 2018

VGI(CO)
GMY(19/12/2018)