IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.34732 of 2007 and
M.P.Nos.1 and 2 of 2007

Tvl. Supreme Plastics
rep. by its Partner
Dilip Kumar Chalani,
S/o.Manack Chand Chalani,
4, Ela Kandappa Chetty Street,
Chennai-600 001. ... Petitioner

Vs

1. The Assistant Commissioner (CT),
   Zone 2, Chennai,
   III Floor, PAPJM Building,
   Chennai-600 006.

2. The General Manager,
   District Industries Centre,
   Thiruvallur,
   Thiruvallur District. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 1st respondent dated 9.8.2007 in RC.No.3686/05/31 and quash the same.

For Petitioner : Mr.N.Muralikumar
for M/s.McGan Law Firm
For Respondents : Ms.G.Dhana Madhri,
Government Advocate (Taxes)

O R D E R

The Writ Petition has been filed, challenging the order of the 1st respondent, namely, the Assistant Commissioner (CT), Zone 2, Chennai, III Floor, PAPJM Building, Chennai-600 006, dated 9.8.2007 made in RC.No.3686/05/31 on the ground that as long as the Eligibility Certificate given by the 2nd respondent has been in force, the 1st respondent cannot demand the sales tax for the deferral period from the petitioner.

2. Learned Counsel appearing for the petitioner would submit that the petitioner is a registered dealer on the file of the Commercial Tax Department. While so, the State of Tamil Nadu has issued G.O.Ms.No.500, Industries Department, dated 14.5.1990, granting the benefit of deferral of sales tax with a view to promote the industries. The General Manager of District Industries Centre, Thiruvallur, the 2nd respondent herein also by his Proceedings dated 10.7.2001 in RC.No.12524/A4/99 granted a Certificate of Eligibility to the petitioner for deferral of sales tax to a maximum amount of Rs.93,46,000/- for a period of 9 years. The 2nd respondent also stipulated the conditions for grant of deferral scheme which is in fact interest free sales tax deferral scheme by which new industries would be entitled to collect sales tax, retain, utilize the same for promotion of the industry and repay it after a period. The Sales Tax deferral was granted taking into consideration of the fixed assets value and after sometime, when an Insurance Policy was taken for a sum of Rs.70,15,000/- by the petitioner insuring the machineries, the 1st respondent objected to the same and wanted the fixed assets to be insured to a value not less in value equivalent to the total deferral amount and insisted that the insurance policy should be taken to cover the deferral loan of Rs.93,46,000/-. When there was a delay in taking the insurance coverage for the remaining amount over and above Rs.70,15,000/-, the Assistant Commissioner (CT), Zone 2, Chennai, the 1st respondent herein wrote to the General Manager, District Industries Centre, Thiruvallur, the 2nd respondent herein, requesting it to cancel the sales tax eligibility certificate and pass orders withdrawing the deferral facility as it was in violation of condition 5.4 of the Eligibility Certificate.

3. The learned Counsel for the petitioner would further submit that again, the 1st respondent, issued a Show Cause Notice dated 9.7.2007 pointing out that there is a sale of plant and machinery to the tune of Rs.1,01,050/- and therefore, it proposes to cancel the sale tax deferral which would result in the requirement to pay a sum of Rs.10,53,912/- in one lump sum along with interest at 2%. But the said communication was not given to the petitioner. Therefore, the petitioner was not able to comply with the same which resulted in passing the impugned order.

4. The learned Counsel for the petitioner referring to the impugned order would submit that the only ground on which the present impugned order passed shows that the petitioner was issued with several notices on different dates, namely, 13.09.2005, 16.10.2006, 6.12.2006 and 13.2.2007 to file the balance sheet for the year 2004-2005 and 2005-2006, but the petitioner has not responded to anyone of the notices. Since one of the staffs, who might have received the notices, has not

placed the same before the responsible officer of the petitioner, they were not served upon the petitioner. Had the petitioner received anyone of the notices, they would have definitely approached the 1st respondent, placed the entire facts before them stating that they were under compulsion to sell the plant and machinery to Rs.1,01,050/- which is nothing to do with the violation of the Condition No.5.4 of the Eligibility Certificate. Therefore, if the petitioner is again granted one more opportunity, it will enable them to place all the facts before the 1st respondent, who in turn, can take any decision afresh.

5. A detailed counter affidavit has been filed by the respondents.

6. Learned Government Advocate (Taxes) appearing for the respondents submitted that when the petitioner was given the benefit of deferral Scheme to promote his industry, the General Manager of District Industries Centre, Thiruvallur, the 2nd respondent herein issued a Certificate of Eligibility to avail the deferral of Sales Tax not exceeding Rs.93,46,000/- between the period from 01.11.1999 to 31.10.2008 i.e. for a period of 9 years. On the basis of the said certificate, the Sales Tax Deferral Scheme was granted. Further, receiving the benefit of Deferral Scheme, they are bound to comply with Condition No.5.4 of the Eligibility Certificate which they have violated. When there is a specific condition in the Eligibility Certificate that the petitioner cannot effect sale of any plant and machinery, they have effected the sale of plant and machinery. Therefore, the impugned order has been passed, however, before passing the impugned order, four notices were repeatedly issued to the petitioner on 13.09.2005, 16.10.2006, 6.12.2006 and 13.2.2007 to file the balance sheet for the year 2004-2005 and 2005-2006 and to submit the renewed insurance policy of the fixed assets for the year 2004-2005 and 2005-2006. But the petitioner has not bothered to respond to anyone of the notices issued as mentioned above. Therefore, the impugned order has been passed confirming the proposal to cancel the deferral scheme and also the deferral agreement dated 03.04.2003 entered into by the Assistant Commissioner (CT), Zone 2, Chennai, with with Supreme Plastics with a further direction to the petitioner to pay the entire deferral amount.

7. Since the petitioner admitted the fact that they have been issued with the Certificate of Eligibility for deferral of Sales Tax to a maximum amount of Rs.93,46,000/- for a period of 9 years and also further claimed that they have not violated the Condition No.5.4 of the Eligibility Certificate because they have effected sale of only a part of the plant and machinery to the tune of Rs.1,01,050/- which is nothing to do with the

violation of Condition No.5.4 of the Eligibility Certificate and consequently, they have not received any one of the notices dated 13.09.2005, 16.10.2006, 6.12.2006 and 13.2.2007 since one of the staffs working in their company had not placed anyone of the notices before the responsible officer, this Court deems it fit to give one more opportunity to the petitioner to put forth their case.

8. Accordingly, the impugned order of the 1st respondent dated 9.8.2007 is set aside. The petitioner is directed to appear before the Assistant Commissioner (CT), Zone-2, Chennai, III Floor, PAPJM Building, Chennai-6 in his office at 3.00 p.m. on 06.06.2019 along with all the documents. On such appearance of the petitioner before the 1st respondent, he shall decide the case of the petitioner afresh on merits without being influenced by the previous order and pass order within three months thereafter.

9. With the above observation and direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT),
Zone 2, Chennai,
III Floor, PAPJM Building,
Chennai-600 006.

2. The General Manager,
District Industries Centre,
Thiruvallur,
Thiruvallur District.

+1cc to Mr.Mccan Law Firm, Advocate SR.No.35692

+1cc to Special Government Pleader SR.No.35497

W.P.No.34732 of 2007

RSV(CO)
GMY(24/05/2019)