BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.08.2019**

CORAM

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH**

**W.P(MD)No.7157 of 2016**
**and W.M.P(MD)No.6057 of 2016**

The Commissioner,
Thoothukudi Corporation,
Thoothukudi ... Petitioner

Vs.

1.The Board of Trustees,
V.O.Chidambaranar Port Trust,
Thoothukudi.

2.The Deputy Chief Engineer,
V.O.Chidambaranar Port Trust,
Thoothukudi ... Respondents

PRYAER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling the impugned records on the file of the second respondent in the proceedings in File No. EC/100/13/2014-Est/D.4463 dated 23.12.2015 and quash the same and consequently directing the respondents to pay the property tax as assessed by the respondent Corporation as per Section 121 of Coimbatore City Municipal Corporation Act, 1981 as adopted by Thoothukudi City Municipal Corporation Act, 2008.

For Petitioner : Mr.S.Saji Bino
For Respondents : Mr.A.Arivuchandran

**O R D E R**

The petitioner is the Commissioner of Tuticorin Corporation and has challenged a reply filed by the V.O.Chidambaranar Port Trust dated 23.12.2015 to the effect that the Port trust is a local authority in terms of Section 3(28) of the General Clauses Act, 1897 not coming within the reach of the Coimbatore City Municipal Corporation 1981 (in short 'Act') for payment of property tax.

2. The petitioner, pursuant to audit objection raised by the Comptroller and Auditor General of India, had issued a notice to the port trust on 16.07.2014. The basis of the notice is an audit report dated 31.03.2014, wherein the audit department has noticed that the

port trust has not been vigilant in remittance of property tax and is in arrears of tax since the first half of 2012-13 till 2014-2015, in all, of a sum of Rs.7,95,453/-.

3. In the report of the Comptroller and Auditor General for the year ended 31.03.2014 at paragraph No.3.2.1 the non-realization of revenue due to non assessment of vacant land owned by the port trust has been specifically raised and it is noted that no reply had been received from the Government till February 2015. As a result, a query appears to have been raised by the Auditor General regarding non-assessment of the ports' property to property tax. It is pursuant to the same, that the petitioner has issued communication dated 16.07.2014 proposing an assessment of the Ports' property.

4. The port has conveyed its stand that the Tamil Nadu Town and Country Planning Act, 1971 and connected Rules would not apply to it. Reliance has been placed on a decision rendered in *W.P. No.23461 of 2009* as well as a decision of the Gujarat High Court in the case of *State of Gujarat and Board of Trustees of Port of Kandla* (MANN/G1/0150/1978). According to the port, since it is a local authority like the Corporation and the Panchayat where all the facilities are its own and none are provided by the Corporation, there can and should be no assessment of its property to tax. This reply is reiterated again in communication dated 23.12.2015 wherein, in conclusion, the port denies any liability to payment of property tax. The second reply daed 23.1.2015 is impugned in the present writ petition.

5. The petitioner avers at paragraph No.25 of the affidavit that all attempts of the Corporation to enter the premises and inspect the same for the purposes of assessment have been thwarted by the port officials.

6. No doubt, the port is entitled to claim exemption if it is so advised, in terms of Section 123 of the Act, that provides for general exemptions from property tax. However, the claim of exemption is one that will have to be considered by the statutory authority, i.e. the petitioner and can either be accepted or rejected. The port in the present case seems to have taken unilateral stand that it is entitled to the exemption. This cannot be so. The specific allegation/averment of the petitioner at paragraph No.25 of the affidavit has also not been denied in the counter.

7.The efforts of the learned counsel for the Port-trust before me is to obtain a positive direction to the effect that it is exempt from the payment of property tax. This cannot be considered by me and that too, in a writ petition filed by the Commissioner of the Corporation. If at all, the port believes that it is entitled to exemption, it is for it to pursue its case before the Commissioner and invite an order in this regard.

8. For this reason, I do not propose to deal with the applicability or otherwise of Section 123 of the Act to the port trust. This is a matter that the petitioner Corporation will consider, if approached. Suffice it to say that the petitioner, being a statutory body, is certainly entitled to take all steps in accordance with law to assess the port trust to property tax, in accordance with law.



9. With these observations, this writ petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar

TO

1.The Board of Trustees,
V.O.Chidambaranar Port Trust,
Thoothukudi.

2.The Deputy Chief Engineer,
V.O.Chidambaranar Port Trust,
Thoothukudi

+1 CC to M/s.A. ARIVU CHANDRAN, Advocate ( SR-82792[F] dated 21/08/2019 )

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**21.08.2019**

CM
MS/19.09.2019/3P.4C