

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:18.08.2020

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.13900 of 2015 & 22165 of 2009
and

M.P.No.1 of 2015 in W.P.No.13900 of 2015

M/s.Neycer India Limited,
Represented by its Senior Manager (Finance),
Mr.T.Mani,
Vadalur,
Cuddalore District.Petitioner in both WPs

Vs

1. The State of Tamil Nadu,
Represented by its Secretary to Government,
Commercial Taxes Department,
Fort St. George, Chennai - 9.
2. Assistant Commissioner (CT),
Cuddalore Taluk Asst. Circle,
Manjakuppam,
Cuddalore - 607001.1st and 2nd Respondents in
both WPs
3. The Board for Industrial and
Financial Reconstruction,
Government of India,
Ministry of Finance,
Jawahar Vyapar Bhavan,
1, Tolstoy Marg,
New Delhi - 110001.
Represented by its Chairman.
4. The Bank of India,
Rep. By its Branch Manager,
IV Floor, Tarapore Towers,
826, Anna Salai,
Chennai - 600002.3rd and 4th Respondents in
WP.No.22165/2009

Prayer in W.P.No.13900 of 2015: Writ Petition filed under
Article 226 of the Constitution of India to issue a Writ of
Certiorarified Mandamus, calling for the records comprised in
impugned Notice in Rc.A3/5843/2000 dated 22.04.2015 on the file

of the 2nd respondent, quash the same and consequently, direct the 2nd respondent to comply with the BIFR Scheme.

Prayer in W.P.No.22165 of 2009: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records comprised in impugned Notice in Rc.A3/5843/2000 dated 12/10/2009 on the file of the 2nd respondent, quash the same and to further forbear the 2nd respondent not to resort to any recovery proceedings during the implementation of the scheme under Sick Industrial Companies (Special Provisions) Act, 1985.

For Petitioner : Mr.V.Ramesh

for Mr.T.Thiyagarajan

For Respondents: Mr.A.N.R.Jayaprathap

Spl. Govt. Pleader for R1 & R2

COMMON ORDER

Today, the matter is listed through Video Conferencing. By consent of both the parties, both the Writ Petitions are taken up for final disposal.

2. The petitioner herein was declared as a sick industrial company. A scheme of revival was sanctioned by the BIFR on 17.10.2008. Based on the order of the BIFR, the petitioner had requested for waiver of interest, penalty and the amount towards non-productions of 'C' forms. The non-consideration of the petitioner's request has necessitated him to file the present writ petitions.

3. Pending the writ petitions, the department, through its letter dated 15.11.2019, had requested to the Waiver Committee of the Government for passing suitable orders, in which the penalty levied under the TNGST Act for the year 1999-2000 for a sum of Rs.31,25,200/-, as well as the interest on the belated payment of deferred tax for the years 2000-01 to 2005-06 amounting to Rs.1.14 crores was recommended to be waived. However, the amount of Rs.80,42,027/- relating to non-submission of 'C' forms for the years 1994-95, 1995-96, 1998-99 and 2000-01 was not recommended, on the ground that there was no proof to support for the loss of records.

4. At this juncture, the learned Special Government Pleader appearing for the respondents 1 and 2 would submit that the orders requesting remission of interest and penalty was sent to the Government on 05.02.2020 and orders are awaited.

5. Insofar as the favourable recommendation towards waiver of the interest and penalty as detailed above, the petitioner

herein may not have any further grievance, since the same is under active consideration before the Waiver Committee. Hence, it would be appropriate to close these writ petitions, insofar as these two heads are concerned, with liberty to the petitioner to challenge any adverse findings made by the Waiver Committee, in this regard.

6. Insofar as the refusal to recommend the waiver of the amount relating to non-submission of 'C' forms are concerned, it is seen that the BIFR order dated 17.10.2008 in paragraph 10.(B) 8 has ordered for exemption in favour of the company from all penalties, penal charges, including interest, interest on interest etc., and all other levies of such nature levied or leviable for late payments of sales tax, late filing of returns etc. As such, the department may not be justified in rejecting such a finding of the BIFR, on the ground that there is no proof to support the loss of records and thereby defy the orders of BIFR. Even assuming that such records are available, the department may not have any option except, to exempt the company for such an amount, which pertains to the non-submission of 'C' forms, in view of the orders of BIFR. In this regard, if the petitioner is granted liberty to approach the Government with a representation seeking for such a waiver, the ends of justice could be secured.

7. In the light of the above observations, the impugned Notice in Rc.A3/5843/2000 dated 22.04.2015 is set aside. Consequently, the petitioner is granted liberty to make a representation to the first respondent seeking for waiver of the amount of Rs.80,42,027/- relating to non-submission of 'C' forms for the years 1994-95, 1995-96, 1998-99 and 2000-2001 and on receipt of such a representation, the first respondent shall consider the same and take appropriate course of action, in accordance with the orders of the BIFR passed in Case No.29/92 dated 17.10.2008, preferably within a period of 12 weeks from the date of receipt of such a representation. Insofar as the recommendation, which is pending before the Waiver Committee relating to penalty and interest, it would be open to the petitioner to challenge the same, in case of any adverse findings therein.

8. The Writ Petitions stand disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Commercial Taxes Department,
Fort St. George, Chennai - 9.
2. Assistant Commissioner (CT),
Cuddalore Taluk Asst. Circle,
Manjakuppam,
Cuddalore - 607001.
3. The Chairman,
Board for Industrial and
Financial Reconstruction,
Government of India,
Ministry of Finance,
Jawahar Vyapar Bhavan,
1, Tolstoy Marg,
New Delhi - 110001.
4. The Bank of India,
Rep. By its Branch Manager,
IV Floor, Tarapore Towers,
826, Anna Salai,
Chennai - 600002.

+1 cc to M/s.T.Thiyagarajan, Advocate Sr.No. 27367
+1 cc to The Government Pleader (Taxes), Sr.No. 27139

W.P.Nos.13900 of 2015 & 22165 of 2009
and

M.P.No.1 of 2015 in W.P.No.13900 of 2015

PP(CO)
RMP (29/09/2020)

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