

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 16437 of 2016

and

W.M.P. No. 14204 and 14205 of 2016

M/s. New Chennai Township Private Limited,
A Company registered under the Companies Act,
Represented by its Authorised Signatory Mr. K.R.Swaminathan,
Having Office at Marg Axis,
4/318, Rajiv Gandhi Road,
Kottivakkam,
Chennai - 600 041. ... Petitioner

-vs-

1. The Commissioner,
O/o. The Commissionerate,
Division V, Service Tax - III,
Ground Floor, Newry Towers,
Plot No. 2054, I - Block,
12th Main Road, II Avenue Anna Nagar,
Chennai - 600 040.
2. The Assistant Commissioner,
O/o. The Commissionerate,
Division V, Service Tax - III,
Ground Floor, Newry Towers,
Plot No. 2054, I - Block,
12th Main Road, II Avenue Anna Nagar,
Chennai - 600 040. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records and quash the impugned show cause notice No. 72/2015 dated 15.10.2015 was issued by the First Respondent in his proceedings No. IV/09/107/2015-ST III ADJ.

For Petitioner : Mr. D.Baskar

For Respondents: Mr. D.Simon,
Central Government Standing Counsel

O R D E R
(through video conference)

Heard Mr. D.Baskar, Learned Counsel for the Petitioner and Mr. D.Simon, Learned Central Government Standing Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Notice in C. No. IV/09/107/2015 - ST III ADJ dated 15.10.2015 issued by the First Respondent, which is evidently a show cause notice for which the Petitioner has been required to submit its explanation. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in Special Director -vs- Mohammed Ghulum Ghouse [(2004) 3 SCC 440], Secretary, Ministry of Defence -vs- Prabhash Chandra Miradha (AIR 2012 SC 2250) and Life Insurance Corporation of India -vs- A.Masilamani [(2013) 6 SCC 530] that a show cause notice cannot be challenged before completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion.

3. Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in this Writ Petition in the reply to be submitted to the First Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for this Court to interfere at this pre-mature stage of the matter.

4. Learned Counsel for the Petitioner has filed a memo dated 06.11.2020, which reads as follows:-

" Upon application under Sec.7 IRB Code, a creditor has approached Hon'ble NCLT, Chennai in CP/636/IB/CB/267 Dated 05.07.2019 and the same was also confirmed in Appeal No. 729/2019 by the Hon'ble NCLAT.

It is respectfully submitted that by the order of the Company Law Tribunal, Moratorium has been declared and is still continuing. Mr. L.Sivaramakrishnan (9840114561) has been appointed as IRP."

5. In view of the subsequent events, Mr. L.Sivaramakrishnan (9840114561), who has assumed management of the Company of the Petitioner, shall submit reply on behalf of the Petitioner to that Show Cause Notice, and the First Respondent shall send a copy of the show cause notice to Mr. L.Sivaramakrishnan by 31.12.2020. The said Mr. L.Sivaramakrishnan shall submit reply on behalf of the Petitioner by 31.01.2021. The First Respondent shall, after affording full opportunity of hearing to all

parties concerned, duly consider the explanation made on behalf of the Petitioner, deal with the each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate decision taken under written acknowledgment. Though obvious, it is made clear that no opinion has been expressed by this Court on the correctness or otherwise on the merits of the controversy involved in the matter.

In the result, the Writ Petition is dismissed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vjt/dm
To

1. The Commissioner,
Commissionerate,
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Commissionerate,
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Plot No. 2054, I - Block,
12th Main Road, II Avenue Anna Nagar,
Chennai - 600 040.

+lcc to Mr.A.P.Srinivas, Advocate, sr no.36458

+lcc to Mr.D.Baskar, Advocate, sr no.36475

PP(CO)
RMP(02/12/2020)

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