



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.2290, 2291, 2361 & 5200 of 2012

WEB COPY

W.P.No.2290 of 2012

Rajkumar Khemka
No.36, Wallajah Road,
Triplicane, Chennai - 600 002.

...Petitioner

Vs.

1.The Tax Recovery Officer,
Range V, Coimbatore,
Office of the Tax Recovery Officer,
121, Adams Buildings, 60ft.Road,
Tirupur - 641 612.

2.The Assistant Commissioner of Income Tax,
Salary Circle I,
Range. Race Course Road,
Coimbatore - 641 018.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Tax Recovery Officer Range-V, Tirupur and quash the proceedings dated 2.12.2011 and consequently direct the 1st respondent herein to pass appropriate or suitable orders adjudicating upon the claim of the petitioner with the exact demand.

W.P.No.2291 of 2012

Thirupathy Kumar Khemka
No.36, Wallajah Road,
Triplicane, Chennai - 600 002.

..Petitioner

Vs.

1.The Tax Recovery Officer,
Range V, Coimbatore,
Office of the Tax Recovery Officer,
121, Adams Buildings, 60ft.Road,
Tirupur - 641 612.

2.The Assistant Commissioner of Income Tax,
Salary Circle I,
Range. Race Course Road,
Coimbatore - 641 018.

..Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Tax Recovery Officer Range-V, Tirupur and quash the proceedings dated 2.12.2011 and consequently direct the 1st respondent herein to pass appropriate or suitable orders adjudicating upon the claim of the petitioner with the exact demand.

W.P.No.2361 of 2012

NEPC Agro Foods Ltd.,
A Public Limited Company,
registered under Provisions of the
Indian Companies Act 1956
rep.by its Director
Mr.Tirupathi Kumar Khemka,
No.36, Wallajah Road,
Triplicane, Chennai - 600 006.

..Petitioner

Vs.

1.The Tax Recovery Officer,
Range V, Coimbatore,
Office of the Tax Recovery Officer,
121, Adams Buildings, 60ft.Road,
Tirupur - 641 612.

2.The Assistant Commissioner of Income Tax,
Salary Circle I,
Range.V, Race Course Road,
Coimbatore - 641 018.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in issuance of the notice dated 12.1.2012 in Reference No. Nil for settling a sale proclamation in respect of property at 83, M.T.H.Road, Ambattur Industrial Estate, Chennai-600 098 and quash the same and directing the 1st respondent herein to adjudicate upon the claim of the Creditors and specifying the exact demand and following the procedure under Rules prescribed under Recovery of Tax under the Second Schedule to Income Tax Act.

W.P.No.5200 of 2012

NEPC Agro Foods Ltd.,
A Public Limited Company,



registered under Provisions of the
Indian Companies Act 1956
rep.by its Director
Mr.Tirupathi Kumar Khemka,
No.36, Wallajah Road,
Triplicane, Chennai - 600 006.

..Petitioner

Vs.

1.The Tax Recovery Officer,
Range V, Coimbatore,
Office of the Tax Recovery Officer,
121, Adams Buildings, 60ft.Road,
Tirupur - 641 612.

2.The Assistant Commissioner of Income Tax,
Salary Circle I,
Range.V, Race Course Road,
Coimbatore - 641 018.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in issuance of the notice dated 11.8.2011 in Reference No.Nil for settling a sale proclamation in respect of property situate at (1) NEPC Tea Gardens-Total Area 452.98 acres of Mount Sturat Estate, Unit 1 of M/s NEPC Agro Foods Ltd. Waverly Post, Valparai - 642 105 (2) NEPC Tea Gardens-Total Area 428.34 Acres of Waverly Estate, Unit-2 of M/s. NEPC Agro Foods Ltd., Waverly Estate, Waverely Post, Valparai-642 105 and quash the same and directing the 1st respondent herein to adjudicate upon the claim of the Creditors and specifying the exact demand and following the procedure under Rules Prescribed under Recovery of Tax under the Second Schedule to Income Tax Act.

For Petitioners : Mr.V.Anil Kumar
[in all W.Ps]

For Respondents : Mr.A.P.Srinivas
[in all W.Ps]

COMMON ORDER

The learned counsel appearing for on behalf of the petitioners made a submission that the petitioners have already submitted Form Nos.I and II under 'Vivad Se Vishwas' Scheme for settling the dispute between the petitioners and the Department. The said Forms submitted by the petitioners are under consideration. However, issuance of Form III is pending.



2. The learned counsel for the respondents made a submission that the impugned orders have been passed regarding the proclamation of sale and settling the terms thereof. In respect of such proclamation of sale, the petitioners have to raise their objections, if any, before the Tax Recovery Officer under Second Schedule, Rules 9 & 11 of the Income Tax Act.

3. The learned counsel for the petitioners made a submission that already they have raised an objection under Rules 9 & 11 to Second Schedule before the authorities competent. Under these circumstances, the said objections raised against the proclamations of sale, order is to be considered by the competent authorities and moreover, the applications to settle the dispute filed by the petitioners under 'Vivad Se Vishwas' Scheme is also to be considered by following the procedures as contemplated and by affording opportunity to the petitioners. This being the factum, no further adjudication needs to be undertaken in respect of the grounds raised in the present writ petitions as the petitioners themselves admitted that an objection has already been filed before the Tax Recovery Officer under Second Schedule, Rules 9 & 11 of the Income Tax Act.

4. Under these circumstances, the petitioners are at liberty to pursue the applications filed under the 'Vivad Se Vishwas' Scheme and in the event of not settling the issues, the petitioners are also at liberty to restore the petitions, if necessary, after disposal of the applications filed by the petitioners under the 'Vivad Se Vishwas' Scheme.

5. With this liberty, all the writ petitions stand disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Tax Recovery Officer,
Range V, Coimbatore,
Office of the Tax Recovery Officer,
121, Adams Buildings, 60ft. Road,
Tirupur - 641 612.



2.The Assistant Commissioner of Income Tax,
Salary Circle I,
Range.V, Race Course Road,
Coimbatore - 641 018.

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+1 cc to Mr.P.Elango, SR.No.22162
+1 cc to Mr.A.P.Srinivas, SR.No.22331

W.P.Nos.2290, 2291, 2361 & 5200 of 2012

RLD (CO)
NS (04/05/2021)