IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.Nos.1888 & 1889 of 2021

and

C.M.P.Nos.12069 & 12068 of 2021

Om Sakthi Narayani Siddar Peedam
Charitable Trust, represented by
Trustee, K.Soundararajan
No.14, 5th Cross Street,
Rajiv Gandhi Nagar,
Vellore – 1 ... Appellant in both appeals

Vs.

1. The Assistant Commissioner
   (Commercial Taxes)
   Vellore District,
   4, Bharathiar Road,
   Vellore.

2. The Commercial Tax Officer
   Vellore (Rural)
   4, Bharathiar Road,
   Vellore.

3. The Liquidator,
   Vellore District Co-operative Spinning Mills,
   Vellore

4. The Joint Commissioner
   The Commercial Tax
   Vellore District
   4, Bharathiar Road,
   Vellore. ...Respondents in W.A.No.1888 of 2021

[R3 impleaded vide order of this Court
dated 24.02.2020 in W.M.P.No.3007 of 2020
in W.P.No.24137 of 2008]

[R4 impleaded vide order of this Court
dated 23.03.2021 in W.M.P.No.7216 of 2021
in W.P.No.24137 of 2008]

1. Sivakumar
   Deputy Commissioner (Commercial Taxes)
   Vellore
   Vellore District.

2. The Assistant Commissioner (CT) (Territorial)
   Vellore District,
   4, Bharathiar Road,
   Vellore.

3. The Commercial Tax Officer,
   Vellore (Rural)
   4, Bharathiar Road,
   Vellore.

4. The Administrator,
   North Arcot District Co-operative Spinning Mills,
   Ariyur.

5. The Director of Handlooms and Textiles,
   Kuralagam, II Floor,
   Chennai – 600 108. ... Respondents in W.A.No.1889 of 2021

[R4 & R5 impleaded vide order of this Court dated 09.09.2008 in M.P.Nos.2 & 3 of 2008 in W.P.No.4958 of 2008]

Prayer : Writ Appeals in W.A.Nos.1888 and 1889 of 2021 filed under Clause 15 of the Letters Patent to set aside the order, dated 23.03.2021, passed in W.P.Nos.24137 and 4958 of 2008 respectively.

Prayer in W.P.No. 24137 of 2008: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 1st respondent dated 14.08.2008 RC A7/9770/2003, quash the same.

Prayer in W.P.No. 4958 of 2008: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to confirm the highest bid of the petitioner in the auction conducted by the third respondent on 6.12.2006 as per the auction notice published in the Vellore District Gazette dated 5th November 2006 after receiving the balance bid amount.

For Appellant : Mr.Murali Kumaran
for M/s.McGan Law Firm
in both the appeals

For Respondents : Mr.M.Venkateswaran
Government Advocate
in both the appeals

COMMON JUDGMENT

(Judgment was delivered by T.S. SIVAGNANAM, J.)

These Writ Appeals by the Charitable Trust/writ petitioner are directed against the order in W.P.Nos.4958 and 24137 of 2008 dated 23.03.2021.

2.The appellant, a Charitable Trust, sought for issuance of a writ of mandamus to direct the respondents to confirm the highest bid submitted by them in the auction conducted by the 3rd respondent on 06.12.2006 in respect of the property which was brought for auction in the default committed by the Dealer, namely, Vellore District Co-operative Spinning Mills, Vellore, under the provisions of the Tamil Nadu General Sales Tax Act, 1959. The prayer in the other writ petition was to quash the proceedings of the 1st respondent, dated 14.08.2008, by which, the 1st respondent set aside the sale of the property, in which, the appellant had participated. The learned Writ Court did not grant the relief sought for, but granted a small reprieve to the appellant by directing the amount deposited by the appellant, being a sum of Rs.1,35,00,000/-, to be refunded back to the appellant together with interest accrued thereon at the prevailing rates from time to time. The Court further observed that the appellant should furnish the details of the Bank Account to enable the Commercial Taxes Department to pay the said amount together with interest at the prevailing Bank rates and no interest will be payable if the appellant refuses to give the account details.

3.The appellant is before us contending that the auction should not have been cancelled on the ground that the property was never owned by the Co-operative Spinning Mills and without prejudice to such contention, it is submitted that the refund of the amount collected from the appellant should have been directed to be refunded with commercial penal interest.

4.Mr.Murali Kumaran, learned counsel for M/s.McGan Law Firm, counsel for the appellant, would submit that, though the appellant had questioned the correctness of the decision of the Department in setting aside the auction sale, in these appeals, the appellant's contention is with regard to the rate of interest alone.

5.We have elaborately heard the submissions of the learned counsel for the appellant, as well as the learned Government Counsel appearing for the respondents.

6.It is not in dispute that the property, which was put up for auction pursuant to the auction notice dated 05.11.2006, was not owned by Vellore District Co-operative Spinning Mills. It may be true that the Commercial Taxes Department accepted the said property as one of the securities at the time of granting registration under the provisions of the Tamil Nadu General Sales Tax Act, but that may not be a ground which will inure in favour of the appellant who voluntarily participated in the auction sale and therefore, as an intending purchaser, the appellant was required to exercise due diligence and make thorough verification and cannot turn around and say that it is for the Department to verify all the facts. The Doctrine of Caveat Emptor stares at the appellant. The learned Single Bench was right in refusing to grant the relief sought for and it is equally right in directing the amount paid by the appellant to be refunded and also with regard to the rate of interest. Therefore, we find no ground to interfere with the order passed by the learned Single Bench. This finding will ultimately lead to the dismissal of the Writ Appeals. As a consequence, the appellant is entitled to refund of the amount along with interest at Bank rates which are fixed from time to time. The respondent State would submit that, even in the year 2008, when the amount was refunded to the appellant, the same was refused to be accepted. Be that as it may, the fact remains that the amount is yet to be refunded together with interest thereon, as ordered by the learned Single Bench.

7.Before concluding this judgment, we would observe that the appellant is a Charitable Trust and has a huge establishment in Vellore and it is also represented that it is doing several charitable activities. If that is so, the appellant can be gracious enough to give up the claim for interest payable by the Government, because, the Government Exchequer is greatly strained due to Covid-19 Pandemic and it is common knowledge that several philanthropists, industrialists, Charitable Trusts, individuals, Government servants have come forward to voluntarily contribute to the Government to enable them to tackle the pandemic situation. Therefore, it is open to the appellant to make note of this observation and come forward and give up the claim for interest. In the event the appellant is willing, they may give a letter in writing signed by the authorized signatory of the appellant/Trust, and on receipt of the said letter, the respondent Department shall refund the said amount within a period of three weeks from the date on which the said letter is received. In the event the appellant is not willing to give up the claim for interest, the refund as ordered by the learned Single Bench shall be effected within a period of twelve weeks from the date of receipt of a copy of this judgment.

8.Accordingly, these Writ Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Joint Commissioner
   Commercial Tax,
   Vellore District,
   4, Bharathiar Road,
   Vellore.

2. The Deputy Commissioner (Commercial Taxes)
   Vellore
   Vellore District.

3. The Assistant Commissioner
   (Commercial Taxes)
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W.A.Nos.1888 & 1889 of 2021

LN(CO)
LS(23/08/2021)