IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2021

CORAM:

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P. No. 35922 of 2016 and
WMP No.30876 OF 2016

M/s.MEC International Private Ltd.
Rep. By its Senior Manager – Commercial
No.37/6 Arcot Road, Vadapalani
Chennai 600 026. ... Petitioner

Vs.

1.The Managing Director,
Chennai Metropolitan Water Supply and Sewage Board,
Chennai 600 002.

2.Greater Chennai Corporation
Rep. By its Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai 600 003. ... Respondents

(second respondent impleaded
vide order of this Court dated 06.08.2021
in W.M.P.No.34779/2016)

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records in respect of the orders of Taxation Appeal Tribunal dated 12.08.2016 passed in MWSTA No.98 of 2016 and the respondent's demand letter dated 13.09.2012 and quash the same.

For Petitioner : Mr.S.Parthasarathy
Senior Counsel assisted by
Mr.K.V.Bashiyam Chari

For Respondent : Mr.N.Ramesh for R1

ORDER

The Writ on hand is filed questioning the validity of the order dated 12.08.2016 passed by the Taxation Appeal Tribunal.

2.The petitioner is a lessee of entire land comprised in S.No.186 (Part) and 187 (Part) admeasuring about to 8 acres situated in Saligramam Village, which belonged to SMS Bucary Wakf Al Aulad Estate.

3. The petitioner company had taken the said property on lease for industrial purposes. The petitioner company has constructed go-downs and ware houses at their cost and let out to reputed companies. It is admitted that after the enactment of Chennai Metropolitan Water Supply & Sewage Act, the respondent is empowered to levy and collect water and sewage tax from the property owners. The subject properties are being assessed by the Corporation of Chennai under Assessment No.8/129/2857/00/6 for a sum of Rs.1,386.20/- per half yearly tax was assessed and levied and the description of property was

given as 6L, Arcot Road. However, no municipal water or drainage connection was given. But as per the provisions of the Act, the petitioner is levy to water and sewerage tax. The petitioner states that they are maintaining a septic tank in their premises. The respondent did not send any demand notice demanding the water and sewerage tax during the relevant point of time and no assessment was made and therefore, the petitioner could not able to pay the water and sewerage tax then and there. Suddenly the respondent issued the recovery proceedings under Revenue Recovery Act and demanded a huge sum of Rs.17,89,375.60/-. The petitioner filed W.P.Nos.7334 to 7337/2003 before this Court. This Court passed a common order on 28.04.2009 setting aside the impugned orders of demand and remanded the matter back to the first respondent to consider the case of the petitioner sympathetically in the matter of levying of surcharge. However, the first respondent, without considering the case of the petitioner sympathetically, was continuously sending demand notices time and again, which were objected by the petitioner. Vide letter dated 25.01.2010, the first respondent gave an opportunity to the petitioner for personal hearing on 01.02.2000. The petitioner appeared before the competent authority and filed written representation as well along with the documents. Instead of passing an order by assigning reasons, the respondents were again demanding the surcharge amount. During the personal hearing, the Controller of Finance Ms.Gita Kumar in the respondent Organisation advised that if the petitioner is willing and ready to pay a sum of Rs.29,68,949/-, the said amount will be received towards full and final settlement of the disputed issue. The petitioner accepted and settled the said amount as per the discussion.

4. Receipts were issued. Perusal of the receipts would show that the surcharge dues were also adjusted. Thus, the petitioner was under the impression that the entire surcharge amount has been settled and there from there will be no demand for surcharge. Contrary to the decision taken during the personal discussion and in violation of the receipts issued, wherein surcharge has been adjusted, again the first respondent sent demand notices to pay surcharge amount and therefore, the petitioner approached the high Court again by filing writ petition and the writ petition was transferred on constitution of the Tribunal and renumbered as MTSWA No.98/2015. The Tribunal adjudicated the issues and rejected the petition filed by the writ petitioner vide order dated 12.08.2016. Challenging the said order of the Taxation Appeal Tribunal, the present writ petition is filed.

5. The learned Senior counsel appearing on behalf of the petitioner contended that the high Court at the first instance considered the grievances of the writ petitioner and passed an order on 28.04.2009. The High Court in clear terms set aside the order of demand impugned in the said writ petition and remanded the matter back to the authority competent with directions to consider the levying of surcharge afresh sympathetically after giving opportunity to the petitioner to raise all the contentions. The case of the petitioner was considered by the high Court and even after remand, the first respondent has not passed final orders based on the judgment of the High Court. But they were sending the demand notices regularly, which were objected by the petitioner. Under those circumstances, based on the discussion, the petitioner also settled a substantial amount of about Rs.29 lakhs and the said amount was received and receipts were issued.

6. The learned senior counsel appearing on behalf of the writ petitioner drawn the attention of this Court with reference to the receipts issued by the first respondent, which would establish that the surcharge amount has been adjusted from the total liability and accordingly, the entire sum as discussed with the Controller of Finance was paid and adjusted. Thus, the

petitioner was under the impression that he is not required to pay any surcharge and to his shock and surprise, again, the respondent sent several demand letters claiming tax surcharge.

7. Learned Senior Counsel appearing on behalf of the petitioner reiterated that the directions issued by this Court in the Writ Petitions on 28.04.2009 were not implemented in its letter and spirit. The genuine grievances of the petitioner were not considered. Thus, the petitioner was forced to file further writ petitions and on constitution of Taxation Tribunal, those writ petitions were transferred to the Tribunal. The petitioner through their counsel sent a detailed objections to implement the orders passed in the year 2009 by the High Court and further stated that the surcharge amount has already been discussed and settled. Thus, there cannot be any further demand in respect of tax surcharge.

8. The Taxation Appeal Tribunal also failed to consider this aspect. The findings of the Taxation Appeal Tribunal would reveal that the authorities have no power to waive the tax surcharge amount. The Tribunal further held that the tax surcharge is to be levied if there is any belated payment of water

and sewerage taxes. By applying the provisions and without considering the contentions raised, the Tribunal passed the impugned order and therefore, the writ petitioner is constrained to move the present writ petition. It is further contended that as per the order passed by the first respondent, some demand letters are not communicated to the petitioner. The letter dated 30.04.2010 was not even communicated to the writ petitioner and therefore, the case of the petitioner is to be considered based on the settlement discussion concluded in the presence of the Controller of Finance of the respondent and based on the settlement honoured by the petitioner, pursuant to such discussion.

9. The learned counsel appearing on behalf of the first respondent disputed the contentions raised on behalf of the writ petitioner by stating that as per Section 81 Sub Section 2(j) of the Chennai Metropolitan Water Supply and Sewerage Board's Water Tax and Sewerage Tax (Levy and Collection) Regulation, 1991, the respondents are empowered to demand tax surcharges. Regulation, namely, Chennai Metropolitan Water Supply and Sewerage Board's Water Tax and Sewerage Tax (Levy and Collection) Regulation, 1991 also contemplates in Regulation 10 that “the Board shall levy surcharge at the rates specified from time to time for the belated payment of water and sewerage tax.

Surcharge is being levied at 2% per month on recurring basis with effect from 01.10.1997 up to 31.03.2003 and 1.25% per month from 01.04.2003 onwards. In respect of appeal preferred by the assessees for revision of Annual value, the allowable time for payment at revised rate would be 30 days from the date of receipt of order or from the date of intimation from the Board whichever is earlier."

10. Relying on the above provision, the learned counsel appearing on behalf of the respondent reiterated that the authority has no power to waive the tax surcharge in the absence of any power. The petitioner cannot claim waiver of tax surcharge based on the oral discussion, if at all any made with the authority. The receipts are issued by adjusting on year wise basis and the surcharge amount also adjusted in such a manner with reference to the particular year, for which, the dues are to be adjusted. Thus, there is no infirmity as such and adjustment of tax surcharge as well as the arrears of water and surcharge taxes are formatted and accordingly issued to the consumers. Therefore, relying on the said receipts, the petitioner cannot seek waiver of tax surcharge. In the absence of any power cited under Regulation, the authority competent cannot issue any such waiver and High Court also has not issued any

directions and the matter was remanded for fresh consideration.

11. In support of the said contention, the learned counsel appearing on behalf of the first respondent relied on the judgment in the case of A.Abdul Azeez v. The Special Tahsildar (Recovery) dated 2nd November 2016, wherein, the High Court held that "surcharge is a penal levy for non payment of tax within the time stipulated. Thus, there is no discretion vested with the authorities to waive surcharge, as it is automatic for any default in payment of tax within the time stipulated. Therefore, there can be no escape from payment of surcharge as demanded."

12. Considering the arguments as advanced by the learned Senior Counsel appearing on behalf of the petitioner and the learned counsel appearing on behalf of the first respondent, this Court is of the considered opinion that the order passed by this Court is on order of assessment. Paragraph No.7 of the order dated 28.04.2009 passed in W.P.Nos.7334 to 7337 of 2003 reads as under:

> "7.In the facts and circumstances of the case and in the interest of justice, this Court set aside the order impugned in these writ petitions passed by the second respondent in respect of the levying of surcharge alone for the period

referred to above and the matter is remanded to the first respondent with a direction to consider the levying of surcharge afresh sympathetically, after giving opportunity to the petitioner to raise all the contentions, and pass orders in accordance with law as expeditiously as possible."

13. The High Court, while setting aside the demand notices, directed the authority to consider the issues afresh regarding levy of tax surcharge sympathetically and by providing opportunity to the writ petitioner. The consideration regarding waiver of tax surcharge would arise, even on the ground of sympathy, if any such power is vested on the authority under the provisions of the Act. The power, which is not conferred to an authority under the provisions of the statute and regulation cannot be exercised by such authority. In the event of exercise of an excess power, which is not contemplated, then the authority is committed an act of violation of provisions, which is impermissible. Thus, consideration of waiver of tax surcharge by the CMWSSB would arise only any such power is conferred on such authority and not otherwise.

14. Secondly, the High Court has also not granted any such waiver in

favour of the writ petitioner and on certain technical grounds, the matter was remanded back for fresh consideration. The petitioner states that during personal hearing, there was an agreement for settlement. However, such oral discussion, which is not recorded in the form of an order, cannot be taken into consideration by this Court for the purpose of grant of waiver. What transpired between the authority and the petitioner is oral discussion and such oral discussion cannot be relied upon for the purpose of neutralising the provisions of statute and regulations. Therefore, reliance made by the petitioner regarding the oral discussion deserves no merit consideration.

15. Thirdly, the Taxation Appeal Tribunal in clear terms held that as per the Act and the Regulations, namely, Chennai Metropolitan Water Supply and Sewerage Board's Water Tax and Sewerage Tax (Levy and Collection) Regulation, 1991, the authorities have no power to waive the tax surcharge for the belated payment of water and sewerage tax. As far as the other contentions are concerned, the Taxation Appeal Tribunal categorically considered the grounds raised by the petitioner and concluded by citing that there is no provisions under the Act to grant any such waiver by the authority. In the absence of any statutory provisions, this Court cannot show any misplaced

sympathy or otherwise for the purpose of grant of waiver of tax surcharge. The High Court cannot consider such claims on sympathy basis and in the event of showing any such misplaced sympathy, the said sympathy would create a bad precedent and many other similarly placed persons will also claim the same benefit by filing writ petitions before the Court of law. This being the principles to be followed, the very basis for waiver cannot be considered by this Court, as there is no provisions under the Act and Regulation even to consider to grant waiver of tax surcharge. Under those circumstances, this Court is of the opinion that the petitioner has not made out any acceptable grounds for the purpose of interfering with the findings made by the Taxation Appeal Tribunal and the findings of the Tribunal are candid and convincing. Accordingly, the writ petition stands dismissed. However, considering the quantum of tax surcharge to be paid by the petitioner, the respondent may consider recovery of tax surcharge by way of instalments by the petitioner. No costs. Consequently W.M.P.No.30876 of 2016 is closed.

06.08.2021

Index : Yes/No
Internet : Yes
Speaking Order/Non-speaking Order
RR

To
1.The Managing Director,
Chennai Metropolitan Water Supply and Sewage Board,
Chennai 600 002.

2.The Commissioner,
Greater Chennai Corporation
Corporation of Chennai,
Rippon Building,
Chennai 600 003.

S.M.SUBRAMANIAM, J.

RR

W.P.No. 35922 of 2016

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