IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.32913 OF 2019
AND
W.M.P.NOS.33347 AND 33348 OF 2019

GVG Industries Private Limited,
54/2, Jothi Nagar, Venkatesa Mills Post,
Udumalpet - 642128.
Represented by its Office Manager
R.Damodharan. ...Petitioner

Vs

1.The District Collector,
Thiruppur District.

2.The Chairman and Managing Director,
SIPCOT, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

3.The General Manager,
SIPCOT, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

4.The Thasildhar,
Udumalpet,
Thiruppur District. ...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the first respondent dated 05.08.2019 in Na.Ka.No.8598/2019/E3 and the consequent proceedings of the fourth respondent herein dated 22.08.2019 in Na.Ka.No.4492/2019/A5 and quash the same.

For Petitioner : Mr.R.Nalliyappan

For R1 and R4 : Mr.A.Selvendran
Special Government Pleader.

For R2 and R3 : Mr.M.Karthikeyan

ORDER

This Writ Petition has been filed for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the first respondent dated 05.08.2019 in Na.Ka.No.8598/2019/E3 and the consequent proceedings of the fourth respondent herein dated 22.08.2019 in Na.Ka.No.4492/2019/A5 and quash the same.

2. Heard Mr.R.Nalliyappan, learned counsel appearing for the petitioner, Mr.A.Selvendran, learned Special Government Pleader appearing for the respondents 1 and 4 and Mr.M.Karthikeyan, learned counsel appearing for the respondents 2 and 3.

3. The petitioner availed the Term Loan Interest Free Sales Tax facility from second respondent and the petitioner was sanctioned Rs.1,00,00,000/- (Rupees One Crore only). Against which the petitioner availed a sum of Rs. 31.16 Lakhs and the same has been already repaid in the year 2002 itself. Upon discharging the said term loan, the third respondent had issued No due certificate on 05.04.2002. In pursuant to the same, the documents which were pledged for availing the said loan was also released by the second and third respondents in the month of February 2002 itself. However, the petitioner received the impugned proceedings on the file of the first respondent, dated 05.08.2019 and the fourth respondent initiated action under the Section 41 of Revenue Standing Order read with Section 5 of the Revenue Recovery Act, 1864 to recover the unpaid due amount with its interest to Rs. 4,29,742/- (Rupees Four Lakhs Twenty Nine Thousand Seven Hundred and Forty Two only) to the second respondent.

4. A perusal of the counter filed by the second and third respondents revealed that after sanctioning the loan to the rate of Rs.1,00,00,000/- (Rupees One Crore only) by the second respondent and disbursed a sum of Rs. 31.16 lakhs during the year 1983. However, the petitioner was issued No Due Certificate and later pointed out that the petitioner is in arrears of IFST loan, Principal of Rs.1,13,033/- (Rupees One Lakh Thirteen Thousand and Thirty Three only), along with the interest thereon. Therefore, by the letter dated 27.09.2002, requested the petitioner to remit the said loan with interest. It was replied that they are not in arrear of any amount as requested by the second respondent. Therefore, the second respondent had sent a demand notice dated 21.05.2018, requesting the petitioner and their guarantors to pay the dues within a period of 30 days. Even after the request, the petitioner did not pay the sum and as such the second respondent requested the Government to recover the said due by invoking “Tamil Nadu

Revenue Recovery Act, 1864. On the said request, the first respondent authorized the fourth respondent to recover the dues from the petitioner. Thereafter, the fourth respondent issued the impugned proceedings, thereby called upon the petitioner to pay the sum of Rs.4,29,742/- (Rupees Four Lakhs Twenty Nine Thousand Seven Hundred and Forty Two only).

5. The learned counsel for the petitioner would submit that before issuance of the impugned proceedings, dated 22.08.2019, the petitioner was not heard and he was not served any notice for any enquiry. Before passing the impugned demand notice, the petitioner should have been heard and the petitioner is entitled to submit the documents to prove that he repaid the entire loan amount.

6. In support of his contentions, he relied upon the judgment reported in 1975 88 LW 383 in the case of "P.A.Aliyar Sheb and 288 others vs. Independent Dy. Tahsildar, Pallipattu, Chingleput and others", held as follows:-

> "Therefore, in my opinion, the result of the above decisions is that in a case where the amount is recoverable only as "sum due to the State Government" falling within the scope of S.52 of the Revenue Recovery Act and where a person from whom the said amounts is sought to be recovered disputes either the existence of his liability or the extent of his liability, before resort to the provisions of the Revenue Recovery Act can be had, there must be an enquiry by the State in which the alleged defaulter is entitled to participate and wherein the basis of the liability as well as the amount claimed by the State must be made known to the alleged defaulter who is given an opportunity to place all the materials and circumstances which, in his opinion, go to exclude or eliminate his liability itself or to reduce the liability, and a determination based on such enquiry should be arrived at with reference to the existence or the extent of the liability of the defaulter.

7. In view of the above judgment, the petitioner must be given an opportunity before passing the impugned order. A perusal of the records, on the request made by the second respondent, the first respondent authorized fourth respondent to recover the due under the Revenue Recovery Act, 1864. Accordingly, the fourth respondent issued impugned notice, thereby directed the petitioner to pay the due to the tune of 4,29,742/- (Rupees Four Lakhs Twenty Nine Thousand Seven Hundred and Forty Two only). In the said impugned proceedings, no reference was made in respect of the issuance of notice of any enquiry.

8. Considering the above, the impugned order passed by the fourth respondent cannot be sustained and it is liable to be set aside. Accordingly, the impugned order dated 22.08.2019 in Na.Ka.No.4492/2019/A5, passed by the fourth respondent alone is hereby set aside.

9. The fourth respondent is directed to issue notice to the petitioner and the second and third respondents and after giving them an opportunity of hearing, pass orders on the request made by the second respondent within a period of eight weeks from the date of receipt of a copy of this order. It is ordered to proceed under the "Tamil Nadu Revenue Recovery Act, 1864".

10. In the result, this writ petition is partly allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

mn

To

1.The District Collector,
Thiruppur District.

2.The Chairman and Managing Director,
SIPCOT, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

3.The General Manager,
SIPCOT, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

4.The Thasildhar,
Udumalpet,
Thiruppur District.

+1cc to the Government Pleader SR.No.59762

W.P.No.32913 of 2019
and W.M.P.Nos. 33347 and 33348 of 2019

PA(CO)
RVM(08/12/2021)