BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.08.2021
CORAM:
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
W.P.[MD]No.4352 of 2020

P.Nagarajan ... Petitioner

Vs.

1.The Commissioner of Sales Tax,
Chennai.

2.The Deputy Commissioner of Sales Tax,
Madurai.

3.The Assistant Commissioner (ST and CT),
Thirumangalam,
Madurai District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice of attachment issued by the third respondent dated 18.12.2019 and quash the same and consequently direct the respondents to place petitioner company under the waiver scheme of the respondents in the light of the recommendation of the SIPCOTT dated 08.01.1999 besides directing them to waive the sales tax arrears from the assessment year 2000-2005 based on the petitioner's representation dated 06.01.2020.

For Petitioner : Mr.B.Prahalad Ravi
For Respondents : Mr.R.Suresh Kumar
Government Advocate (Civil Side)

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice of attachment issued by the third respondent dated 18.12.2019 and quash the same and consequently direct the respondents to place petitioner company under the waiver scheme of the respondents in the light of the recommendation of the SIPCOTT dated 08.01.1999 besides directing them to waive the sales tax arrears from the assessment year 2000-2005, based on the petitioner's representation dated 06.01.2020.

2.The petitioner is the Managing Director of M/s. Siva Cotton Mills (India) Pvt. Ltd. At the initial stage of the industry, loan under SIPCOTT I.F.S.T deferral specialities was sanctioned to the extent of 260.5 Lakhs. For a period of nine years, the Government has to have an option of sales tax waiver scheme and thereafter, deferral scheme of paying the sales tax for another nine years. In this context, according to the petitioner, only 7 years deferral scheme was availed by the petitioner and in the meanwhile, the petitioner industry has become sick and it approached the B.I.F.R., New Delhi, where the issue had been pending a long time. Ultimately, the industry had been declared sick and therefore, the petitioner industry was not able to pay the tax. In this context, it is the further case of the petitioner industry that if the deferral scheme coupled with waiver is taken into account in the context of the economical position of the petitioner industry which has already become sick and presently become defunct, the tax component as has been assessed and demanded by the respondents can be waived. Therefore, in this context the petitioner has given a representation to the Assistant Commissioner, Thirumangalam Assessment Circle, Thirumangalam, who is the third respondent herein on 27.12.2019.

3.However, without considering the said representation and deciding the same on merits by giving an opportunity of being heard to the petitioner, the respondents had invoked the provisions of the Revenue Recovery Act, 1890. Accordingly, the third respondent had issued a notice of attachment dated 18.12.2019, in which the property belonging to the petitioner was sought to be attached for recovery of the amount and therefore, challenging the said notice of attachment, though this writ petition has been filed, the learned Counsel for the petitioner would submit that unmindful of the challenge made in this writ petition against the impugned notice of attachment dated 18.12.2019, if a direction is given to the respondents to consider the representation of the petitioner dated 27.12.2019, with regard to the plea of the petitioner for giving waiver of the tax and if the same, is decided either way, depending upon the outcome of the same, the further action pursuant to the impugned notice dated 18.12.2019, can be permitted to go on. Therefore, in that line, if this Court showed its indulgence, the petitioner would be satisfied, learned Counsel for the petitioner contended.

4.I have heard the learned Government Advocate appearing for the respondents, who would submit that, though there had been a deferral scheme of tax for certain period, subsequently, the tax became due, which can very well be demanded and recovered from the petitioner industry. In this context, even though it was claimed that the petitioner is entitled for some waiver, whether the petitioner would be eligible or entitled for waiver or not cannot be decided at this moment, because the petitioner admittedly had been in tax due for several years, which has become overdue in view of the deferral scheme. Period of tax was over as the original scheme for deferral started in the year 2008. Even assuming that it was availed by the petitioner for seven years or nine years that period was also over. Therefore, as of now, the petitioner cannot claim for any deferral and thus, there is every justification for the respondents to issue the impugned notice of attachment, pursuant to which the property of the petitioner can very well be attached by invoking the provisions of the Revenue Recovery Act, 1890.

Therefore, the learned Counsel would submit that the plea raised by the petitioner as well as the challenge made in this writ petition, challenging the impugned notice of attachment dated 18.12.2019, are unsustainable. Therefore, this writ petition deserves to be rejected and accordingly, it can be rejected, he contended.

5.Though, the challenge had been made to the notice of attachment dated 18.12.2019, learned Counsel for the petitioner has confined with the prayer that insofar as the impugned notice is concerned, that can be deferred or kept in abeyance for a shorter period during which the representations of the petitioner dated 27.12.2019 and 06.01.2020, can be directed to be considered by the respondents and if the respondents consider the same and passes any order on the plea of the petitioner, the needful can be done by both parties.

6.I have considered the said submissions made by the learned Counsel for the petitioner and I have heard the learned Government Advocate for the respondents.

7.Though such a prayer of challenge of the impugned notice dated 18.12.2019 has been made, the learned Counsel since has not canvassed the point of the validity or otherwise of the impugned notice and alternatively, since he has made such a plea as narrated above, this Court feels that the proceedings issued by way of attachment can be proceeded. However, before which, the request made by the petitioner for seeking waiver under the scheme as projected by the petitioner can also be considered by the respondents and once such a consideration is shown and ultimately, an order is passed in this regard by the respondents, pursuant to which the respondents can proceed or otherwise with the impugned attachment notice dated 18.12.2019. In that view of the matter, this writ petition is disposed of with the following direction:

> **"the impugned order dated 18.12.2019, shall be kept in abeyance for a period of one [1] month from the date of receipt of a copy of this order, within which the petitioner's request by way of representations dated 27.12.2019 and 06.01.2020, shall be considered by the respondents and orders to that effect shall be passed on merits and in this regard any further inputs are required to be obtained from the petitioner, such an opportunity also can be given to the petitioner and after getting the input as such from the petitioner, final order on merits on the representations of the petitioner referred to above shall be made by the respondents within a period of four [4] weeks thereafter. It is needless to mention that depending upon the outcome of the orders to be passed as indicated above by the respondents, the further persuasive action pursuant to the impugned**

attachment notice dated 18.12.2019, or otherwise can be proceeded by the respondents".

8.With the above observations and directions, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commissioner of Sales Tax,
Chennai.

2.The Deputy Commissioner of Sales Tax,
Madurai.

3.The Assistant Commissioner (ST and CT),
Thirumangalam,
Madurai District.

+1 CC to M/s.SPL GP (SR-25183[F] dated 04/08/2021)

+1 CC to M/s.B.PRAHALAD RAVI, Advocate (SR-25258[F] dated 04/08/2021)

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DKS(CO)
KB(19.08.2021) 4P 6C