BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]No.20526 of 2021
and
W.M.P.[MD]No.17161 of 2021

P.Muthurakku ... Petitioner

Vs.

1.The Chairman and Managing Director,
Tamil Nadu Small Industries Development Corporation Ltd.,
SIDCO Corporate Office Building,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai – 32.

2.The Branch Manager,
Tamil Nadu Small Industries Development Corporation Ltd.,
SIDCO Branch Office,
Thondi Road,
Sivagangai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned show cause notice issued by the second respondent dated 08.11.2021 in Rc.No.357/C/2019 and quash the same as illegal and consequently direct the second respondent grant sufficient time to pay the remaining cost for the Developed Plot Nos.28 and 29 in SIDCO Industrial Estate, Sivagangai as per the allotment order dated 22.11.2021 in Allotment Order No.6111/IE4/2019 by taken into consideration for the representation of the petitioner dated 11.11.2021.

For Petitioner : Mr.G.Aravinthan
for Mr.A.Mohan

For Respondents : Mr.T.Sakthi Kumaran
Standing Counsel

O R D E R

Captioned main writ petition has been filed assailing a show cause notice dated 08.11.2021, bearing Reference No.357/C/2019 issued by the second respondent. This show cause notice shall hereinafter be referred to as 'impugned SCN' for the sake of convenience and clarity.

2.Mr.G.Aravinthan, learned Counsel representing the Counsel on record for the writ petitioner submits that the first respondent had allotted developed plots bearing Nos.28 & 29, measuring an extent of 0.87 acre or thereabouts in SIDCO Industrial Estate at Sivagangai on 22.11.2019, at a cost of over 50 Lakhs. Suffice to say that the aforesaid cost had to be paid by writ petitioner to SIDCO in a phased manner. It is not necessary to dilate into those factual details owing to the narrow compass on which captioned matter turns.

3.Notwithstanding very many averments in the writ affidavit and notwithstanding several grounds raised in the writ affidavit at the hearing (assailing the impugned SCN), learned Counsel for writ petitioner submitted that the writ petitioner has sent a representation dated 11.11.2021, *inter alia* highlighting the corona virus pandemic and consequent lock down [hereinafter 'Covid-19 situation', collectively] and seeking extension of timelines *qua* payments.

4.Learned Counsel for writ petitioner submits that the Covid-19 situation is something which could none could either portend or presage. As far as the challenge to the impugned SCN is concerned, learned Counsel submits that the impugned SCN has been issued without considering the writ petitioner's representation dated 27.09.2021 which is at page 11 of the typed set of papers and the same is as follows:

From 27.09.2021

P.Mutharakku,
78-2, 1st Cross Street,
Majeeth Road,
Sivagangai.

To

The General Manager Avl,
SIDCO Corporate Office,
Industrial Estate,
Guindy, Chennai.

Respected Sir

Sub : SIDCO Industrial Estate Sivagangai – DP No.28, 29 allotted M/s.Hallow Block and Cement works – plot cost with interest not paid – Now Rs.10,00,000/- (Rupees Ten Lakh only) paid in Sivagangai branch A/c.TANSIDCO – IOB NO.008402000000052 – IFSC NO.IOBA0000084 on 27.09.2021- Acquisation land cost for Ring Road Rs.96,00,000/- (Rupees Ninety Six lakhs only) – with in short time receive – full settlement with interest should be paid – request to time extension – reg.

Ref : 1. HO Allotted order No.6111/1E4/2019 dt : 22.11.2019.

2. RC.No.6111/1E9/2019 dt : 19.04.2021.

In respect of above letter, sorry for delay I expected land Acquisation amount and some other sources not received amount. Now today 27.09.2021, Rs.10,00,000/- (Rupees Ten Lakhs) paid in Sivagangai branch A/c.TANSIDCO – IOB NO.008402000000052 – IFSC NO.IOBA0000084 through IDBI Bank, Sivagangai in My Account No.0284102000009256.

So, please be request to balance amount and interest very short time I will paid. If late, again I request kindly allow further 2 months time to pay the installment amount with penalty.

Thanking you

Yours faithfully

Enclosure :
IDBI Bank Receipt Copy for Ten Lakhs paid.

Copy to
The Branch Manager,
SIDCO Office, Thondi Road,
Sivagangai.

5.Mr.T.Sakthi Kumaran, learned Standing Counsel accepts notice on behalf of both the respondents.

6.Owing to the short point on which captioned main writ petition turns with the consent of the learned Counsel on both sides, the main writ petition is being taken up, heard out and disposed of.

7.Learned Standing Counsel for SIDCO submits that the writ petitioner has submitted himself to the jurisdiction by replying to the impugned SCN. It is pointed out that the reply is dated 12.11.2021.

8.Before proceeding further, I am clear in my mind that challenge to a SCN in writ jurisdiction can only be only on very limited grounds ie., jurisdictional issue, Natural Justice Principle ['NJP' for brevity] violation, disregarding settled principle of laws to mention some of the exceptional circumstances under which a Writ Court will interfere *qua* challenge to an SCN. One of the recent case laws on this point is ***Coastal Container Transporters Association case*** {order dated 26.02.2019 in Civil Appeal No.2276 of 2019}. Facts are captured in paragraph No.4 and ratio (capturing line of authorities) is set out in paragraph No.19. Paragraph 4 and paragraph 19 read as follows:

> *'4. Necessary facts, in brief, are as under :*
>
> *First respondent is an association, whose members are transport operators engaged in the business of transportation of goods entrusted by the customers. By way of impugned show cause notices, the appellants have proposed to demand service tax from the respondents under the category of "cargo handling service", while it is the case of the respondents that the service which is being provided by them, falls under the taxable category of "goods transport agency". The respondents, to bolster their case, have placed reliance upon circulars dated 06.08.2008 and 05.10.2015 issued by the Central Board of Excise and Customs (CBEC).*
>
> *Based upon the intelligence gathered by the officers of Rajkot Regional Unit, which revealed that several business entities including respondent nos.2 and 3 who are engaged in doing the business of cargo handling in west coastal region but had got themselves registered under "good transport agency", by taking approval from the competent authorities, searches were conducted in the premises of respondent nos.2 and 3. It is alleged that during such searches several incriminating documents, including the quotations submitted by the respondent- companies to their customers were seized and statements of the Directors were recorded as per the provisions of Central Excise Act, 1944 read with*

the provisions under Finance Act, 1994. Subsequently, the show cause notices dated 08.10.2015 and 30.09.2015, were issued to respondent nos.2 and 3, which are impugned in the writ petition filed before the High Court.

5. to 18. .....

19. On the other hand, we find force in the contention of the learned senior counsel, Sri Radhakrishnan, appearing for the appellants that the High Court has committed error in entertaining the writ petition under Article 226 of Constitution of India at the stage of show cause notices. Though there is no bar as such for entertaining the writ petitions at the stage of show cause notice, but it is settled by number of decisions of this Court, where writ petitions can be entertained at the show cause notice stage. Neither it is a case of lack of jurisdiction nor any violation of principles of natural justice is alleged so as to entertain the writ petition at the stage of notice. High Court ought not to have entertained the writ petition, more so, when against the final orders appeal lies to this Court. The judgment of this Court in the case of ***Union of India & Anr. v. Guwahati Carbon Ltd.*** *(supra) relied on by the learned senior counsel for the appellants also supports their case. In the aforesaid judgment, arising out of Central Excise Act, 1944, this Court has held that excise law is a complete code in order to seek redress in excise matters and held that entertaining writ petition is not proper where alternative remedy under statute is available. When there is a serious dispute with regard to classification of service, the respondents ought to have responded to the show cause notices by placing material in support of their stand but at the same time, there is no reason to approach the High Court questioning the very show cause notices. Further, as held by the High Court, it cannot be said that even from the contents of show cause notices there are no factual disputes. Further, the judgment of this Court in the case of* ***Malladi Drugs & Pharma Ltd. v. Union of India****, relied on by the learned senior counsel for the appellants also supports their case where this Court has upheld the judgment of the High Court which refused to interfere at show cause notice stage.'*

[Extracted and reproduced as such]

9.In the case on hand, none of those exceptions much less exceptional circumstances obtain. This itself will draw the curtains on the captioned writ petition. However, as the request for extension of time is based on Covid-19 situation which the writ petitioner could neither portent nor presage, this Court considers it appropriate to dispose of the captioned writ petition in the following manner:

a) The impugned show cause notice dated 08.11.2021 bearing Reference No.357/C/2019 is not interfered with. To put it differently, it is sustained. It will proceed and will be carried to its logical end.

b) Writ petitioner's reply to impugned SCN dated 12.11.2021 shall be considered along with the aforementioned 27.09.2021 representation of the writ petitioner. In other words, the writ petitioner's reply to impugned SCN and the representation dated 27.09.2021 will be treated as integral part and parcel of one another.

c) Respondent SIDCO shall pass orders on the basis of the aforementioned reply / representation considering both as reply to SCN as expeditiously as the business of the respondents would permit but in accordance with law and on the merits of the matter.

d) The order passed in the aforesaid manner shall be duly communicated to the writ petitioner within seven [7] working days from the date of the order.

e) No precipitative action shall be taken by the SIDCO until service of the disposal order on the writ petitioner in the aforesaid manner.

f) If the order disposing of the proceedings is adverse to the writ petitioner, the precipitative action shall remain in abeyance for one week from date of service of the proceedings on the writ petitioner.

10. Captioned writ petition is disposed of with the aforesaid directives in the aforesaid manner. Consequently, captioned Writ

Miscellaneous Petition is disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS III)

// 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 Chairman and Managing Director,
Tamil Nadu Small Industries Development Corporation Ltd.,
SIDCO Corporate Office Building,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai – 32.

2.The Branch Manager,
Tamil Nadu Small Industries Development Corporation Ltd.,
SIDCO Branch Office,
Thondi Road, Sivagangai.

+1 CC to M/s.T. SAKTHIKUMARAN, Advocate (SR-35119[F] dated 19/11/2021)

W.P.[MD]No.20526 of 2021
17.11.2021

SR(CO)
SB(08.12.2021) 7P 4C