IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.7589 of 2022

M/s.The Tamil Nadu Textile Corporation Limited,
Represented by Mr.M.Rajendran,
Managing Director,
Earlier at Avanashi Road,
Coimbatore - 18, now at
201B, Alagesan Road,
Saibaba Colony, Coimbatore - 641 011.

... Petitioner

Vs

1.The Additional Commissioner
(Review and Appeal),
Office of the Additional Chief
Secretary/Commissioner of
Commercial Taxes,
Chepauk, Chennai.

2.The Deputy Commissioner (CT)
Now designated as the Joint Commissioner (ST),
Coimbatore.

3.The Commercial Tax Officer,
Avanshi Road Circle,
Coimbatore - 18.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records on the files of the 1st respondent in RA1/RP/91/1999 dated 31.12.2021, and quash the same as being without jurisdiction and arbitrary and hence invalid and illegal.

For Petitioner : Mr.V.Srikanth
For Respondents : Mr.R.Siddharth
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Certiorari calling for the records on the files of the 1st respondent in RA1/RP/91/1999 dated 31.12.2021 and quash the same as being without jurisdiction and arbitrary and hence invalid and illegal.

2. The petitioner is a public sector Corporation viz., the Tamil Nadu Textile Corporation Limited. It was

incorporated under the Companies Act, 1956 by the certificate of incorporation dated 04.04.1969. The petitioner was entrusted with the functioning of the Spinning Mills as per Somasundaram Spinning Mills (Acquisition and Transfer) Act, 1986 with effect from 14.08.1986.

3. The Act provides for takeover and transfer of textile undertaking within the State of Tamil Nadu including the right to title and in respect of the owners in relation to the textile undertaking and all the properties of the textile undertaking were vested in the Government as per Section 5 of the Act.

4. While that being so, the Government of Tamil Nadu through Handlooms, Handicrafts, Textiles and Khadi (CII) Department dated 30.11.1988 issued a Government Order in G.O.Ms.No.317, under which, the payment of tax by way of deferral scheme was given to the petitioner Corporation. The salient features of the G.O. Reads thus:

> "2.The Director of Handlooms & Textiles has therefore suggested that the following concessions may be sanctioned to the Somasundaram Super Spinning Mills:
>
> 1. Power cut exemption.
> 2. Interest free sales tax loan.
> 3. Ways and means advance of Rs.30.00 Lakhs.
> 4. Sanction of Rs.84.00 lakhs as promoters contribution for the modernization of the mills.
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> 3.The Managing Director, Tamil Nadu Textile Corporation has also requested the Government to sanction the above relief measures urgently lest it will lead to possible colsure of the mills. To consider the steps to be taken for the rehabilitation of the Somasundaram Super Spinning Mills a meeting was held with the officials of the concerned departments on 5.9.88 and it was decided at the meeting that the following two concessions that are given to sick private spinning mills may be extended to this nationalized mill also viz.
>
> 1. Power cut exemption for a period of three years and
> 2. Deferment of sales tax dues for three years on the usual terms.
>
> 4. The Government accordingly direct that the following two concessions be granted to the Somasundaram Super Spinning Mills, Muthanendal;
>
> 1. Power cut exemption for a period of three years.
>
> 2. Deferment of sales tax dues for the three years, i.e. the payment of sales tax dues shall commence from the fourth year after the date of issue of the order and the payment shall be as detailed below:

a) During the fourth year, the arrears of sales tax dues of the first year shall be paid along with the dues of fourth year.

b) During the fifth year the arrears of sales tax dues of the second year shall be paid along with the dues of the fifth year.

c) During the sixth year the arrears of sales tax dues of the third year shall be paid along with the dues of sixth year."

5. Accordingly, the petitioner was granted the deferral scheme of three years for payment of tax for the year 1988-89, 89-90, 90-91, after November 1991, the three years deferral period since would be over, the petitioner has to start the payment of tax for the 4th year along with the first year. Like that, in the 5th year, tax should be paid for 5th year and 2nd year, like that, in the 6th year would be paid for 3rd and 6th year.

6. Though this scheme was introduced and the benefit of deferral scheme was enjoyed by the petitioner Corporation as per the condition imposed in the G.O., they could not make the payment, when he starts in the 4th year but it was paid only sometime in 1994 and thereafter. Therefore, delay in payment of the tax which was due for the first 3 years.

7. Therefore, in respect of the delayed tax paid by the petitioner Corporation, the Commercial Tax Department imposed calculated compounding interest and they wanted to recover the interest from the petitioner. As against such calculation of interest, appeal and revision was filed and the matter has ultimately gone to the Government, where, the Government, having considered the plea of the petitioner, has rejected the same by confirming the orders passed by the Department and such order was passed by the Government on 31.12.2021 in RA1/RP/91/1999 which is under challenge in this writ petition.

8. Heard Mr.V.Srikanth, learned counsel appearing for the petitioner, who would submit that, the liability of paying the interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959 may not be applicable to the petitioner case, because, the respondent on the wrong impression that, under Section 17-A of the Act, especially under sub-Section (2) of Section 17-A, if the conditions imposed for repayment of the tax due from the deferral scheme which is announced under Section 17-A of the Act, the beneficiary would not be entitled to claim waiver of the interest and it has to pay the interest.

9. This interpretation sought to be given by the respondents which is confirmed by the Government through the impugned order may not hold good, because, the very 17-A itself was inserted in the Act with effect from 15.07.1989 and subsequent provisions viz., Section 17-A (2) was inserted with effect from 01.04.1990.

10. Whereas, according to the learned counsel for the petitioner, the G.O.No.317 was issued on 30.11.1988, therefore, what are all the benefits that was conferred or accrued arising out of the said G.O. on the petitioner may not be taken out or to be interpreted by imposing the conditions stated in Section 17-A or 17-A(2) of the Act as those provisions were subsequently inserted by way of amendment i.e., after the issuance of G.O.Ms.No.317.

11. Therefore, the learned counsel appearing for the petitioner would contend that, since there has been no specific conditions imposed in G.O.Ms.No.317 that, if there is a delay in payment under the deferral scheme, the petitioner is liable to pay the interest, such interest cannot be calculated and imposed on the petitioner either under G.O.Ms.No.317 or under Section 17-A or 17-A(2) read with Section 24(3) of the Act. Therefore, the impugned order is liable to be interfered with as it would not stand in the legal scrutiny, he contended.

12. Per contra, Mr.R.Siddharth, learned Government Advocate appearing for the respondents would submit that, though the G.O. was issued on 30.11.1988 and subsequently, the 17-A provision as well as the 17-A(2) were inserted in the Act, at the time of making the payment after the deferral scheme was over i.e., in the year 1991 or 1991-92, what was prevailing under the legislation is especially under Section 17-A(2) of the Act that, the beneficiary of the deferral scheme is not liable to pay the interest, however, the conditions imposed under the deferral scheme is to be complied with, without which, no such benefit of waiving the interest would arise as that has been subsequently mandated under Section 17-A(2) of the Act and that alone will prevail, therefore, the learned Government Advocate for the respondents would submit that, there is every justification on the part of the Revenue to claim the interest for the belated payment which has been admittedly made by the petitioner after the deferral scheme.

13. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14. Now the point raised by the petitioner before this Court is that, the petitioner was given the benefit of deferral scheme through G.O.Ms.No.317 dated 30.11.1988, that was issued prior to the amendment made in Section 17-A of the Act, which was admittedly made with effect from 15.07.1989.

15. Moreover, the non-obstante Clause contained in Section 17-A(2) which was introduced with effect from 01.04.1990, according to the learned counsel for the petitioner, will not stand in the way for the petitioner to claim the waiver for interest, because, these provisions had

come into effect only after the issuance of G.O. in 1988. Therefore, what are all the benefits accrued to the petitioner from the said G.O. shall not be taken away by the subsequent insertion of the Section 17-A or 17-A(2).

16. In other words, the learned counsel would contend that, the conditions imposed under G.O.Ms.No.317 since has not expressly made anything that, the petitioner is liable to pay the interest in case of delayed payment of tax after the three years deferral period, the condition imposed under Section 17-A(2) shall not be imposed on the petitioner, which is nothing but a super imposition of condition and it is detrimental to the interest of the petitioner, after any amount is availed under the Scheme introduced and implemented in respect of the petitioner under G.O.Ms.No.317, therefore, on that ground only the learned counsel wants relief.

17. However, the said arguments advanced by the learned counsel appearing for the petitioner cannot be accepted, because, it might have been issued the G.O.Ms.No.317 dated 30.11.1988, under which, the deferral scheme was given to the petitioner for making payment of the tax only after three years.

18. After three years the due starts from November 1991, therefore, as per G.O.Ms.No.317 the first payment i.e., the tax due on 1st year and 4th year shall be made after November 1991, especially in the year 1991-92. Whereas, admittedly the first payment has been made sometime in 1994, therefore, there was a delayed payment and every year there was a delayed payment in this regard.

19. At the time when the dealer has come to make the payment even according to the deferral scheme, as provided under G.O.Ms.No.317, both the provisions i.e., Sections 17-A as well as 17-A(2) had been introduced and had been given effect to and they were very much available in the statute book.

20. Once the provisions have been introduced in the legislation, that alone will prevail which is the settled proposition of law as the executive order issued under the executive power of the State will not override the legislation which is being made by competent legislature.

21. Under Section 17-A(2) of the Act, there has been a non-obstante Clause with the following words that "Notwithstanding anything contained in this Act, the deferred payment of tax under sub-section (1) or sub-section (1-A) shall not attract interest under sub-section (3) of section 24 provided the conditions laid down for payment of the tax deferred are satisfied." (Emphasis supplied).

22. So the benefit of waiver of interest as provided under Section 17-A(2) will be available to the petitioner in case the petitioner has complied with the conditions laid down for payment of deferred tax.

23. The conditions laid down need not be necessarily only under the conditions to be imposed after introduction of Section 17-A of the Act but also the conditions imposed prior to the introduction of Section 17-A of the Act like the present one, where, the executive order under G.O.Ms.No.317 was issued, where, such conditions were imposed.

24. Therefore, if the petitioner is not able to satisfy the conditions imposed under the G.O., by which, the deferral scheme was given to the petitioner, certainly that would attract Section 17-A(2) of the Act under which, the interest waiver shall not be made available to the petitioner, because, admittedly the petitioner has not complied with the conditions imposed under the deferral scheme.

25. Therefore, the arguments advanced by the learned counsel appearing for the petitioner is liable to be rejected, accordingly it is rejected. Hence, this Court finds no infirmity in the order passed by the Government in the order impugned, hence such order is to be sustained. In the result, the Writ Petition is liable to be dismissed, accordingly it is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Sgl
To
1.The Additional Commissioner
(Review and Appeal),
Office of the Additional Chief
Secretary/Commissioner of
Commercial Taxes,
Chepauk, Chennai.

2.The Deputy Commissioner (CT)
Now designated as the Joint Commissioner (ST),
Coimbatore.

3.The Commercial Tax Officer,
Avanshi Road Circle,
Coimbatore - 18.

+1 cc to Mr.V.Srikanth, Advocate Sr.NO. 21993
+1 cc to Special Government Pleader(TAXES) Sr.NO. 21889

pmk(CO)
A.SK(10/06/2022)