BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.11.2022**

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16433 of 2017
and
W.M.P.(MD)No.13096 of 2017

VTM Ltd.,
Sulakarai,
Virudhunagar – 626 003.
represented by its Company Secretary ... Petitioner

Vs.

1. The State of Tamil Nadu,
   represented by its Secretary to Government,
   Department of Labour and Employment,
   Secretariat, Chennai.

2. The Director of Industrial Safety and Health,
   No.47/1, SIDCO Industrial Estate,
   Guindy, Chennai – 600 032. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the second respondent in C1/11560/17, dated 21.07.2022 and quash the same as illegal and consequently, direct the respondents to receive the factory license renewal fee in terms of G.O.Ms.No.53, Labour and Employment (M2), dated 12.04.2012 from the year 2018 onwards and refund the excess amount of Rs.96,000/- collected so far for the years 2012 to 2017 within the period that may be stipulated by this Court.

For Petitioner : Mr.M.E.Ilango

For Respondent : Mrs.D.Farjana Ghoushia
Specail Government Pleader

ORDER

This writ petition is filed challenging the impugned proceedings of the second respondent, dated 21.07.2017 and consequently, direct the respondents to receive the factory license renewal fee in terms of G.O.Ms.No.53, Labour and Employment (M2), dated 12.04.2012 from the year 2018 onwards and refund the excess amount of Rs.96,000/- collected so far for the years 2012 to 2017 within the stipulated time.

2. The petitioner is a limited Company engaged in the manufacture and sale of woven fabric. The petitioner was having two separate manufacturing units, namely, A Mill VN 206 and B Mill VN 1703. The petitioner mill was paying the renewal charges for A Mill was Rs.36,000/- and B Mill was Rs,20,000/-. Totally the petitioner's Mill was paying Rs.56,000/-. Due to administrative reasons, the petitioner Mill applied for the merger of the two Mills during 2005, vide application, dated 25.02.2005 and 13.04.2005. The respondent passed proceedings in G.P.(Nilai) No.174, dated 07.12.2006, approving the merger, however with the condition that the petitioner should pay the loss that would be incurred to the Government by merging the units. Therefore, the petitioner was continuing to pay Rs.56,000/-, even though, the Schedule under Rule 4 states the petitioner mill is liable to pay only Rs.48,000/-. The petitioner was not having grievance until then.

3. However, the respondents revised the Schedule through G.O.Ms.No.53, dated 12.04.2012. As per revised schedule the petitioner merged Mill is liable to pay Rs.96,000/-. However, the respondent

applied the amended slab considering the mill as two units and imposed fees as Rs.72,000/- for A Mill and Rs.40,000/- for B Mill, totally the license renewal fee is Rs.1,12,000/-. Aggrieved over the same, the present writ petition has been filed.

4. When the writ petition came up for admission, this Court has granted an Interim Stay, vide order, dated 12.09.2017. In spite of interim stay, the respondent demanded Rs.1,12,000/-. Therefore, the petitioner started paying the demanded amount.

5. The second respondent has filed a counter stating that both the units were merged as per G.P.(Nilai) No.174 dated 07.12.2006. The petitioner mill was allowed to merge the units with a condition, the petitioner should pay the loss to the Government. Having accepted the condition, the petitioner cannot turn around and deny paying the separate amount as stated in the revised schedule. Hence, the respondents prayed to dismiss the writ petition.

6. Heard Mr.E.Ilango, learned Counsel appearing for the petitioner, Mrs.Farjana Ghoushia, learned Counsel appearing for the respondents and perused the records.

7. The Tamil Nadu Factories Act and Rules were enacted to regulate the factories. Any executive order passed under the Factories Act should be in consonance with the Act. The respondents have passed an order in G.P.(Nilai) No.174, dated 07.12.2006 and allowed to merge the units. The Act has not granted any authority to demand over and above the rates mentioned in the schedule Then the respondents cannot demand beyond the schedule that has been prescribed in the revised rates. In fact, this Court is of the considered opinion that G.P.(Nilai) No. 174 dated 07.12.2006, itself is against the Act. The learned Counsel appearing for the petitioner further submitted that this schedule which was passed in the year 2012, subsequently, the schedule was revised three times. Therefore, this Court is of the considered opinion that the proceedings passed in G.P.(Nilai) No.174, dated 07.12.2006 in illegal and is liable to be quashed. If quashed the petitioner may demand the

amount that was paid from 2006 onwards. Therefore, this Court is of the considered opinion that the said proceedings cannot be invoked for the revised rates from 2012 onwards. The learned Counsel appearing for the respondent submitted that the first respondent is an unnecessary party, therefore, the first respondent is exonerated. This Court is inclined to pass the following orders:

(i) The impugned proceedings of the second respondent in C1/11560/17, dated 21.07.2017 is quashed.

(ii) The G.P.(Nilai) No.174 dated 07.12.2006, is illegal and the respondents are restrained from collecting excess amount from 12.04.2012

(iii) The respondents have collected in spite of interim order beyond the rates that are prescribed under Rule 14, which is illegal.

(vi) The respondents are directed to adjust the excess amount from the future payment.

(v) With the above said direction, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

28.11.2022

Index : Yes / No
Internet : Yes / No
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To

1. The Secretary to Government,
   State of Tamil Nadu,
   Department of Labour and Employment,
   Secretariat, Chennai.

2. The Director of Industrial Safety and Health,
   No.47/1, SIDCO Industrial Estate,
   Guindy, Chennai – 600 032.

S.SRIMATHY, J

jbr

Order made in
W.P.(MD)No.16433 of 2017

28.11.2022