IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.OP No. 20973 of 2022 &

Crl. MP.No. 13695 of 2022

1 S.DURAISAMY
2 D.PREM
3 AADITH D.VIKRAM

...petitioner

Vs.

1 THE DEPUTY COMMISSIONER INCO
ME TAX CIRCLE 1 INCOME TAX OFFICE AADAMS
PLAZA NO. 121 60 FEET ROAD TIRUPUR 641602.

...Respondent

PRAYER : This petition has been filed under Section 482 of Cr.P.C, to call for the records in C.C.No.741 of 2017 pending on the file of the Judicial Magistrate No.I Tiruppur and quash the same with all further and consequential proceedings against the Petitioners herein.

For Petitioners: Mr.P.V.Balasubramanian
Senior counsel.
For R1 : Mr. V.Vijayakumar,
Special Public Prosecutor.

ORDER

The petitioner herein filed this petition to call for the records in C.C.No.741 of 2017 pending on the file of the Judicial Magistrate No.I Tiruppur and quash the same with all further and consequential proceedings against the Petitioners herein.

2. The brief facts of the case:

M/s Classic Spinning Mills Private Limited (in short "Mill") engaged in the business of manufacture and sale of yarns. The directors of the said company are D.Prem, Shri Aadith Vikram and Shri S.Duraisamy. The said Mill has filed return of income for the assessment year 2011-12 on 29.03.2013 declaring chargeable to tax of Rs.11,02,500/- and deemed income under Section 115JB of Rs. 1,07,62,740/-. As per the return, the accused had an aggregate liability of Rs.27,58,070/-, including tax and interest. As against the aggregate tax liability, the accused had prepaid taxes amounting to Rs.11,62,173/-. The return of income for the assessment year 2011-12 in the case of the accused was processed by centralized processing centre (CPC), Bengaluru on 03.09.2013 under section 143(1) of the IT Act, 1961, raising a total tax demand of Rs.17,79,100/-. Thereby, the accused had willfully evaded payment of self-assessment tax payable under Section 140A of the Income Tax Act, 1961. Thus, the offence punishable under Section 276C(2) has been committed by the accused. Hence, the case.

3. The learned counsel for the petitioner submits that due to the adverse circumstances beyond the control of the petitioners and challenging market conditions the profitability of the Mill began to suffer. Due to the above factors, the "Mill" began to lose money and continue to run below breakeven. Thereafter, the operations of the Mill was temporarily halt due to the persistent strain on liquidity. Faced with significant losses, Mill was unable to satisfy its statutory obligations and loan repayment obligations on time as planned, although always willing and being ready to honor it. Subsequently, Mill defaulted on its payment commitments towards the Financial Creditor due to circumstances beyond its control, and the account was classified as a Non performing asset on 31.07.2014. The core of all complications was that all their efforts to revive the company were shattered when, one of the creditor Aegan Industries Private limited filed a petition in CP No. 234 of 2015 for winding up the Mill before this Court and the said petition was admitted on 15.01.2017/06.04.2017 and an official liquidator was appointed to take over the Mill affairs. The production unit and other

assets that were pledged as security to the Financial Creditor were taken over by the Financial Creditor, who also sent out attachment notices and the affairs of the company was also taken over by the official liquidator. Hence, Mill was constrained from disbursing any payments let alone the statutory payments. Since, the petitioner's business was shut down, they were unable to make any payments towards any liability. Therefore, the there is no wilful or deliberate default in payment of tax. Hence, he prays to allow this petition.

4. The learned counsel for the respondent submits that as part of business transaction the petitioner is bound to pay the tax but the petitioner wilfully defaulted in payment of tax. Hence, show cause notice was issued and even then they were not paid the tax. Hence, the proceedings were initiated against the petitioner for default in payment of tax.

5. By way of reply, the learned counsel for the petitioner submits that on 21.09.2016 itself at the instigation of the third party official proceedings against the PGC corporation was initiated to that effect order passed by the official liquidator is produced before this Court, which clearly shows that on

21.09.2019 liquidation proceedings initiated against the PGC corporation. Further, the demand notice was also issued to PGC corporation under Section 13 of SARFAESI proceedings. Furthermore, before issuance of demand notice, classified as NPA on 21.07.2019. Further, the demand notice dated 16.04.2015 issued to the Classic Spinning Mills under Section 13(2) of SARFAESI Proceedings for the non payment of dues shows that the company was under financial crisis. Further, he relied the judgments of this Court in the case of S.P.Velayutham Vs. Assistant commissioner of income tax reported tin 2022 442 ITR 74:

17. In Ganga Devi vs. State of Gujarat [[2021] 437 ITR 323 (Guj)] the High Court of Gujarat at Ahmedabad held as follows:

"22.1 What the law requires is the intention to evade payment of taxes then it is not mere failure to pay the tax but must be something more. The assessee must be aware that the tax was leviable and such assessee deliberately avoids paying it. The word 'evade' in the context means defeating the provisions of law of paying tax."

18. Considering the above judgments and the mere failure to pay the tax in time without any intention or deliberate attempt to avoid tax in totality or without any mens rea to avoid the payment, the word employed "wilful attempt" cannot be inferred merely on failure to pay tax in time. If the intention of the assessee to evade the payment of tax was present from the very inception, he would not have made further payments. The statements filed by the Department would also indicate and Crl.M.P.Nos.10920 and 10921 of 2017 that he was continuously paying the taxes from the year 2017 by instalments and he has paid the tax from 2016 till 10.11.2021 around 40 instalments he paid about Rs.1,95,76,736/-. His conduct itself shows that there was no wilful attempt to evade the payment of tax and payment of the tax in instalment in fact clearly probabalise his reply given to the show cause notice which has not taken note of the Revenue.

6. On perusal of the records, it reveals that on 28.03.2017 respondent issued show cause notice to the petitioner for default in payment of tax for the assessment year 2011-12. Even from the year 2013 onwards the company was under financial crisis. Further the non payment of the dues in company account was declared as NPA in the year of 2013 itself. Section 276 (c) (ii) of Income Tax Act read as follows:

(2)If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the Court, also be liable to fine.Explanation. - For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person-(i)has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or(ii)makes or causes to be made any false entry or statement in such books of account or other documents; or(iii)wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or(iv)causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.]

7. As discussed above, the Mill was under financial crisis and the company account was declared as NPA and SARFAESI proceedings also initiated. On seeing the entire facts and other NPA proceedings, which clearly shows that there is no wilful and deliberate intention on the side of

the petitioners to evade the tax. Further, the judgments relied by the petitioner is squarely applicable to the facts of the case. Hence, this Court is inclined to quash the C.C.No.741 of 2017 pending on the file of the Judicial Magistrate No.I Tiruppur.

8. In the result, this petition is allowed. No Costs. Consequentially, connected miscellaneous petition (s), if any, is closed.

28.02.2024

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To
1. The Public Prosecutor,
High Court, Madras.
2. The Judicial Magistrate No.I Tiruppur.

T.V.THAMILSELVI, J.

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