In the High Court of Judicature at Madras

Dated : 19.8.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN
and
The Honourable Mr.Justice T.MATHIVANAN

Writ Appeal Nos.1160 to 1164 of 2015
and all connected pending MPs

M/s.Surabhi Iron & Steel Company
Private Limited, rep.by its Director
Coimbatore-641107. ...Appellant in all the appeals

Vs

The Commercial Tax Officer,
Ganapathy Assessment Circle,
Coimbatore-641018. ...Respondent in all the appeals

APPEALS under Clause 15 of the Letters Patent against the common order dated 20.2.2015 made respectively in W.P.Nos.4374 to 4378 of 2015.

W.P.No.4374 to 4378/2015: Prayer in all cases:- Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus Calling for the records of the respondent in his proceedings in TIN 33382204062 / 2009-10 dt 29.12.2014 and quash the same and direct the respondent to redo the assessment after considering the objections and giving a personal hearing to the petitioner

For Appellant : Mr.K.R.Krishnan

For Respondent : Mr.A.N.R.Jayapratap, GA (Taxes)

COMMON JUDGMENT

(Judgment was delivered by V.RAMASUBRAMANIAN,J

The appellant has come up with the above appeals against the common order passed by the learned Single Judge on 20.2.2015, setting aside the orders of assessment and remitting the matters back for a fresh disposal, however, upon condition that the appellant shall pay 20% of the tax demanded.

2. Heard Mr.K.R.Krishnan learned counsel for the appellant. Mr.A.N.R. Jayapratap, learned Government Advocate (Taxes) takes notice for the respondent.

3. The appellant is not and actually cannot be aggrieved by the substantial portion of the orders of the learned Judge, as they actually succeeded before the learned Judge. The only area of dispute is as to whether the appellant could have been directed by the learned Judge to pay 20% of the tax demanded, as a pre-condition or not.

4. But, it is seen from paragraph 8 of the order passed by the learned Judge on 20.20.2015 that the learned Judge was induced to give a direction only in accordance with the offer made by the learned counsel for the appellant. Paragraph 8 of the order of the learned Judge reads as follows:

> "Without going into the merits of the case and as the petitioner is willing to pay 20% of the tax amount, I direct the authority to pass orders on merits, within a period of four weeks from the date of personal hearing and the petitioner shall appear for personal hearing on 16.3.2015 before the authority. In case the petitioner fails to avail the opportunity of personal hearing, whatsoever, the reason, it is open to the respondent to pass orders on merits and in accordance with law."

5. However, Mr.K.R.Krishnan, learned counsel for the appellant contends that the appellant never agreed to make payment. In any case, the learned counsel invites our attention to the decision of a Division Bench of this Court dated 15.6.2015 passed in W.A.Nos.794 to 797 of 2015. In that case, a Division Bench set aside the similar order passed by the learned Judge despite the fact that it was recorded by the learned Single Judge that the appellant had volunteered to make payment of 10% tax amount.

6. At the outset, it should be pointed out that in law, whenever an order is set aside, the question of directing the assessee to make a deposit does not arise. But, once a person agrees to make payment and that is recorded by the learned Judge, the assessee is not entitled, thereafter, to turn around and become alive to the law on the point. The question as to whether the assessee gave consent before the learned Judge or not, cannot be gone into in an appeal. If a statement recorded by a learned Judge on the basis of a purported submission or consent made by the learned counsel for the assessee is disputed, the remedy is not really to file an appeal, but only to go before the very same learned Judge. Therefore, we find no merits in the writ appeals.

7. Accordingly, the writ appeals are dismissed. No costs. Consequently, all connected pending MPs are also dismissed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To
The Commercial Tax Officer,
Ganapathy Assessment Circle,
Coimbatore-641018.

+1 cc to Mr.K.r.Krishnan, Advocate, sr.43798
+1 cc to M/s.Special Government Pleader, sr.44310

W.A.Nos.1160 to 1164 of 2015
& all connected pending MPs

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