IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2015

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THE HONOURABLE MR. JUSTICE T.RAJA

Writ Petition No.11489 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.S.S.M.Processing Mills Ltd.,
represented by its Director
Mr.Purushothaman .. Petitioner

Vs.

1. The Assistant Commissioner (CT)
Office of Commercial Tax Office
Sankari.

2. The Branch Manager
Karur Vysya Bank Ltd.,
Komarapalayam. .. Respondents

PRAYER: This Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the proceedings of the first respondent in ROC. 1302/A3/2014 and quash the attachment proceedings dated 27.10.2014 as ex-facie and contrary to the provisions of Tamil Nadu VAT Act 2006.

For Petitioner : Mr.K.Venkatasubramanian

For Respondents : Mr. Manoharan Sundaram
Additional Government Pleader

ORDER

This Writ Petition has been directed against the impugned proceedings issued by the Assistant Commissioner (CT), Sankari, the first respondent herein, in ROC. 1302/A3/2014 wherein attachment proceedings has been passed on 27.10.2014 on the ground that the same is contrary to the provisions of Tamil Nadu Value Added Tax Act, 2006.

2. Learned counsel appearing for the petitioner would submit that the petitioner being an Assessee on the files of the first respondent and being a registered dealer under the TN VAT Act 2006 and the Central Sales Tax Act 1956, is a Public Limited company engaged in the business of processing of Cotton man-made fabrics, involving padding, drying, curing, scouring, bleaching and dyeing and printing. Some of their inter-state and local customers export these goods after getting the same processed from the petitioner. For the job work the petitioner used to purchase raw materials in the form of chemicals and dye from outside the State sellers and use the same in the processing job. While doing so, they are paying additional excise duty for sales tax on their processed fabric before sending the processed goods to their customers on the processing charges collected by them. Pursuant to the introduction of the re-casted Section 3-B with effect from 26.06.1986 for deemed sales of materials involved in the execution of works contract, the first respondent started issuing notices for the year 1986-87 proposing to assess the inter-state purchases of dyes used in the job contract, on the ground that the same had not suffered tax inside the State under Section 3B. Initially some of the assessments were made by the first respondent by estimating the deemed sale value of 50% of dyes purchased inter-state and adding for freight and gross profit by creating the taxation on the deemed transfer of dyes. However, aggrieved by the order passed by the first respondent on 28.08.2014, an appeal was preferred to the Appellate Authority. The Assistant Commissioner (CT), Erode who by common orders set aside the levy of tax on the alleged transfer value of chemicals on the ground that there was no transfer of chemicals in the dyeing works contract, as the same are washed away. When the Appellate Assistant Commissioner (CT), Erode set aside the levy of tax on the transfer value of the dyes in the works contract and held that the adoption of 50% of value of dyes used in the contract will be reasonable and justifiable estimate for determining the taxable turnover under Section 3B of the Tamil Nadu General Sales Tax Act, 1959, aggrieved by the same, the State filed Second Appeals with the Sales Tax Appellate Tribunal in some cases, where the First Appellate Authority allowed the petitioner's first appeal entirely. However, the petitioner also filed second appeals in respect of certain assessments where the First Appellate Authority confirmed the taxation under Section 3B in so far as dyes were concerned. Thereafter, the Appellate Authority dismissed the State appeals holding that in respect of the petitioner job work there can be no tax under Section 3B of the TNGST Act 1959. Again, the State preferred a Tax Case Revision before this Court and the same was also allowed. Therefore, the grievance of the petitioner is, in so far as the petitioner is concerned, when the Appellate Tribunal has issued order in the appeals filed by State

following the unreported orders of this Court in T.C. No. 1661 of 2008 dated 25.08.2010, without considering the petitioner's legal plea, the first respondent simply created tax under 3B of the TNGST Act,1959. That apart, by communication dated 12.03.2015 the Revisional Authority has also issued notice. Being so, when the matter is pending for consideration, the first respondent ought not to have hurriedly passed the impugned order as that would create multiplicity of proceedings, such an approach is legally untenable, accordingly, he prayed for allowing the prayer.

3. Mr. Manoharan Sundaram, learned Additional Government Pleader representing the respondents, finding that the Revisional Authority has issued notice on 12.03.2015, is unable to explain to this Court as to how the first respondent can proceed, when the matter is already seized by the Revisional Authority. However, he submitted that the first respondent has already passed an order of attachment in respect of his Bank Account and has thus collected the following amounts:

Account No. 1147.135.703

1. dt. 25.11.2014 Amount Rs. 58,620.22
2. dt. 18.02.2015 Amount Rs. 57,540
3. dt. 04.03.2015 Amount Rs. 2,54,791

Account No. 1147.135.1424

1. dt. 05.11.2014 Amount Rs. 224.53
2. dt. 24.12.2014 Amount Rs. 1,02,988.82
3. dt. 25.03.2015 Amount Rs. 31,550.84

Account No. 1147.129.13

1. dt. 05.11.2014 Amount Rs. 3,772.50

Therefore, Mr. Manoharan Sundaram pleaded that the amount already attached by the petitioner need not be returned to the petitioner as the same would be adjusted after the disposal of the appeal, by the Appellate Authority. Learned counsel appearing for the petitioner in reply would submit that as the matter is pending for consideration before the Revisional Authority, the impugned order is liable to be set aside.

4. This Court finding merits on his submission, is inclined to set aside the impugned order, since the issue is already seized by the Revisional Authority. As stated by learned counsel the amount already recovered by the first respondent, as mentioned above, shall be retained with the Assessing Authority and the same shall be adjusted after the final order is passed by the Revisional Authority.

5. Accordingly, the impugned order is set aside and the writ petition is allowed. Consequently, connected Miscellaneous Petitions are closed. However, there will be no orders as to costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Assistant Commissioner (CT)
   Office of Commercial Tax Office
   Sankari.

2. The Branch Manager
   Karur Vysya Bank Ltd.,
   Komarapalayam.

1 cc to Mr.K. Venkatasubramaniam, Advocate, Sr. 21747
1 cc to Spl.Government Pleader (Taxes),. Sr. 21847

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