IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15339 of 2015
And
M.P.No.1 of 2015

M/s.Royal Metals
represented by its Proprietrix Smt.Mohini Devi
Old No.10, (New No.19), Mooker Nalla Muthu Street
Chennai - 600 001. ...Petitioner

Vs.

1. The Assistant Commissioner (CT),
   Broadway Assessment Circle,
   Chennai - 01.

2. The Joint Commissioner of Commercial Taxes
   Chennai (North) Division
   Greams Road, Chennai - 06.

3. The Dhanalaxmi Bank Ltd
   No.269, Thambu Chetty Street
   Chennai - 600 001. ...Respondents

Prayer:
Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the 1st respondent to release the attachment of the petitioner's bank account bearing number 97.53.29177 in the 3rd respondent bank and further direct the 1st respondent not to initiate any attachment/recovery proceedings against the petitioner pursuant to assessment order in Rc No/33476260019/2014-15 dated 09/03/2015 till disposal of the petitioner's revision petition on the file of 2nd respondent in R.P.No.18/2015/B1.

For Petitioner : Mr.J.Adithya Reddy

For Respondent : Mr.Manoharan Sundaram for R1 and R2
Additional Government Pleader (T)

ORDER

This writ petition has been directed against the impugned order passed by the Assistant Commissioner (CT), Broadway Assessment Circle, Chennai with regard to the recovery action taken against the petitioner on the ground that although the petitioner has brought to the notice of the first respondent the pendancy of the revision petition and also the stay petition on the file of the second respondent, the Joint Commissioner of Commercial Taxes, Chennai (North) Division, Greams Road, Chennai and recovery action should not be initiated, even after taking notice of the submission made by the petitioner that the petitioner's revision petition along with stay petition is pending for consideration on the file of the second respondent, the first respondent has wrongly chosen to initiate recovery action and adding further, the learned counsel appearing for the petitioner would submit that this Court has repeatedly held including the judgment reported in 2001 (124) STC 671 (Mad) that notice for recovery/ attachment has to be served on the assessee while the same being sent to the garnishee/ third party/ bank. Without even serving copy of the attachment notice on the petitioner, they have wrongly passed the attachment order. Concluding his argument, he would submit that in any event when the petitioner's revision petition along with stay petition is pending consideration on the file of the second respondent, the first respondent ought not to have initiated the recovery proceedings.

2.The learned Additional Government Pleader (T) appearing for the respondents 1 and 2 would submit that the second respondent taking into account that the petitioner would be taking long time for disposal of the pending revision petition, passed the impugned order. However, with regard to the non-issuance of prior notice to the petitioner before passing recovery order, he was unable to show any explanation whatsoever.

3.Heard the learned counsel appearing for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader (T) who takes notice for the respondents 1 and 2.

4.This Court finding that the impugned order that has been passed without prior notice to the petitioner, that too, pending revision along with stay application on the file of the second respondent, is not able to support the impugned order, hence, the impugned order is liable to be set aside. Accordingly, the same is set aside. However, the second respondent, the Joint Commissioner of Commercial Taxes, Chennai (North) Division, Greams Road, Chennai is hereby directed to take the revision petition along with the stay petition and pass appropriate orders on merits and in accordance with law expeditiously.

5.With the above direction this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT),
   Broadway Assessment Circle,
   Chennai - 01.

2. The Joint Commissioner of Commercial Taxes
   Chennai (North) Division
   Greams Road, Chennai - 06.

1 CC to Mr.J.Adithya Reddy, Advocate SR.No. 26020

1 CC to the Government Pleader, SR.No. 26196

W.P.No.15339 of 2015
And
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TEJ (CO)
PSI (08.06.2015)