IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-08-2015

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

WRIT PETITION No.23768 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.South India Plywood Mart,
Represented by its Proprietor,
Mr.A.Suresh,

Previously at
No.25/1, Chairman Munusamy Street,
Arcot,
Vellore District.

Presently at
No.12/2, Arignar Anna Salai,
Arcot,
Vellore District. ... Petitioner

Vs.

1. The Commercial Tax Officer,
   Arcot Assessment Circle,
   No.28, Vedagiri Street,
   Arcot, Vellore District.

2. The Manager,
   Punjab National Bank,
   Arcot Branch,
   Arcot,
   Vellore District. ... Respondents

Writ petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent in TIN No.33844581958/2009-2010 dated 6.4.2015 and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.K.Soundararajan

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader
(Taxes)

ORDER

The petitioner is a dealer in Plywood and a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter called as the 'TNVAT Act'). For the assessment year 2009-2010, deemed assessment was made. Thereafter, on the basis of checkpost movement web records, a revision was proposed and due to petitioner's failure to file objections, an order of assessment came to be passed on 19.3.2012. The said order was challenged before the Appellate Authority in Appeal No.75 of 2012 and by an order dated 2.11.2012, it was partly allowed and partly remanded. The entire penalty was deleted.

2. The department preferred a State Appeal with regard to levy of penalty and ultimately, the said appeal in STA No.164 of 2013 by order dated 28.2.2014 was decided in favour of the Revenue. Of course, by an ex parte order.

3. The learned counsel for the petitioner submitted that the ex parte order was sought to be modified by filing appropriate application before the Tribunal and the said application is pending. In the meanwhile, the impugned order dated 6.4.2015 came to be passed levying penalty as well as taxes to the turnover which was originally considered and allowed by the First Appellate Authority. The assessment year was also wrongly mentioned as 2010-2011 instead of 2009-2010.

4. The learned counsel for the petitioner further submitted that citing the error apparent on the face of the record, the petitioner has filed a Rectification Petition under Section 84 of the TNVAT Act on 30.4.2015 and the said petition is pending. In the meanwhile, the first respondent proceeded to attach the Bank Account of the petitioner and issued communication dated 7.7.2015 to that effect to the second respondent. Hence, the petitioner is before this Court.

5. The learned counsel for the petitioner submitted that having received the copy of the order passed by the Appellate Authority, who deleted certain portions of the turnover, there is no justifiable reason for the Assessing Authority to adopt the same once again in the impugned order. He also submitted that being a Quasi Judicial Authority, the respondent ought to have followed the directions issued by the Appellate Authority. Hence, the learned counsel sought to quash the attachment order.

6. Heard both sides.

7. Admittedly, there is an error apparent on the face of the record with regard to the turnover and the assessment year in

question. As rightly pointed out by the learned counsel for the petitioner when an application under Section 84 of the Act is pending, followed by a reminder dated 23.7.2015, the attachment of the Bank Account is per se illegal, by which act of the respondent, the petitioner is unable to operate his Bank Account.

8. In view of the above, Hence, the first respondent is directed to consider the Rectification Application dated 30.4.2015 filed by the petitioner under Section TNVAT 84 of the Act and pass appropriate orders on merits and in accordance with law by giving an opportunity to the petitioner. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. In the meanwhile, the Bank Account Attachment order issued on 7.7.2015 by the first respondent shall be lifted forthwith and the petitioner be permitted to operate his Bank Account.

9. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Svn.

To

1. The Commercial Tax Officer,
   Arcot Assessment Circle,
   No.28, Vedagiri Street,
   Arcot,
   Vellore District.

2. The Manager,
   Punjab National Bank,
   Arcot Branch,
   Arcot,
   Vellore District.

+1cc to Mr.K.Soundararajan, Advocate, S.R.No.41497
+1cc to the Special Government Pleader(Taxes), S.R.No.41534

WP. No.23768 of 2015

PPA(CO)
CA(25/08/2015)