IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.29807 of 2015
and
M.P.Nos 1 to 3 of 2015

Tvl.Sreevasta Tube Corporation
rep. by Managing Director
Mr.C.V.Ravindranath
Regd. Off at No.29/2
Sembudoss Street
Chennai-1 [Petitioner]

Vs

1 The Assistant Commissioner (CT)
Broadway Assessment Circle
Thambu Chetty Street Chennai-1

2 The Appellate Deputy Commissioner (CT)
Chennai North 3rd Floor
CT Building Annexure Greems Road Chennai-6

3 The Branch Manager
State Bank of Travancore NSC Bose Road
Chennai-1 [Respondents]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records on the files of the 1st respondent in TIN/ 33900060270/2011 -12/A3 dated 10.8.15 and quash the same being illegal invalid violated and principles of natural justice and contrary to the law.

For petitioner : Mr.D.Vijayakumar

For respondents : Mr.S.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) who took notice for the respondents and with their consent, the main writ petition itself is taken up for disposal.

2. This writ petition has been filed challenging the order of the respondent in TIN/ 33900060270/2011 -12/A3 dated 10.08.15.

3. The learned counsel for the petitioner submitted that the petitioner, being a dealer in Seamless & ERW boilers Tubes and assessee on the file of the 1st respondent herein, regularly submitting their monthly returns and paying taxes in accordance with law. For the assessment year 2011-12, the petitioner reported total and taxable turnover of Rs.57,08,24,683/- and Rs.55,83,56,981/- under the TNVAT Act. But, the 1st respondent determined total and taxable turnover of Rs.56,24,83,490/- and Rs.54,44,53,461/- and imposed tax and penalty by order dated 30.04.2015. Since the 1st respondent has not calculated the correct rate of tax, the petitioner approached the officer to correct the turnover and tax adjustments and payments. However, in the meantime, the 1st respondent issued order of bank attachment under Section 45 of the Act, without serving the copy to the petitioner for the arrears of tax in pursuance to the order dated 30.04.2015, though mentioning the proceedings dated 19.05.2015. Later on, according to the learned counsel for the petitioner, based on the petitioner's representations dated 18.06.2015 and 23.06.2015, the 1st respondent adjusted the correct taxes but imposed taxes and penalty under other category by order dated 03.07.2015. While passing the revision order, the 1st respondent insisted the petitioner to pay 25% of the tax to withdraw the bank attachment, before serving the revised order, pursuant to the same, the petitioner remitted a sum of Rs.3,00,000/- which is more than the disputed tax and the 1st respondent also released the bank attachment through his notice dated 17.07.2015. It is the contention of the learned counsel for the petitioner that when the petitioner approached the 1st respondent by stating that no notice was issued before passing the revision order, the petitioner was advised that if aggrieved, the petitioner can file an appeal. Accordingly, aggrieved over the said order, the petitioner preferred an appeal before the 2nd respondent along with a stay petition with a delay of 16 days. The issue in appeal before the 2nd respondent is reversal of ITC for non production of declaration forms and non issuance of notice before imposing tax under other category. The appeal papers which were

presented on 19.08.2015 were returned by the 2nd respondent pointing out certain defects. After correcting the same, the petitioner re-presented the same on 27.08.2015. However, till date there is no progress. Hence, according to the learned counsel for the petitioner, the petitioner sent a representation through his counsel on 09.09.2015 and requested the 2nd respondent to list the case. Till date, there is no response. In the meantime, the 1st respondent issued bank attachment notice, without serving copy to the petitioner. That apart, according to him, when the petitioner represented before the 1st respondent about the attachment through letter dated 15.09.2015, the xerox copy of the bank attachment order dated 10.08.2015 was served on 18.09.2015. and in the impugned attachment order, the 1st respondent mentioned the arrears based on the proceedings dated 30.06.2015, but on the said date, no such proceedings for the said assessment year was issued. According to the learned counsel for the petitioner, since the petitioner filed an appeal along with stay application before the 2nd respondent, the order of bank attachment is totally arbitrary. Hence, the petitioner is before this Court.

3. The learned Additional Government Pleader (Taxes) appearing for the respondent submitted that there shall be an direction to the appellate authority to entertain the appeal and pass appropriate orders on merits.

4. Admittedly, challenging the assessment order for the year 2011-12, the petitioner preferred an appeal and the same was returned for rectifying certain mistakes and for production of proof for payment of 25% of disputed tax. Accordingly, the petitioner, complying those defects, re-submitted the papers, but, till date, the appeal has not been taken up for consideration. In the meanwhile, the petitioner came to understand by letter dated 11.09.2015 of the 3rd respondent Bank stating that their Bank account was attached pursuant to the order dated 10.08.2015 enclosing Form U for attachment of the balance amount in their account.

5. Since the petitioner's Bank account is attached and in view of the submission made by the learned Additional Government Pleader (Taxes) appearing for the respondent that a direction may be given to the appellate authority to entertain the appeal and dispose of the same , this writ petition is disposed of with the following directions:-

(i) The petitioner is directed to pay 25% of the disputed tax other than the amount of 25% already deposited and on production of proof of such payment,

(i) the bank attachment effected by the 1st respondent is directed to be lifted forthwith and on such an order being communicated to the 3rd respondent, the 3rd respondent Bank is directed to permit the petitioner to operate their bank account

(ii) the appellate authority is directed to take up the appeal and decide the same on merits, after affording due opportunity to the petitioner.

No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1 The Assistant Commissioner (CT)
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3 The Branch Manager
State Bank of Travancore NSC Bose Road
Chennai-1

1 CC to Mr.D.Vijayakumar, Advocate SR.No. 51463
1 CC to the Government Pleader, SR.No. 51728

W.P.No.29807 of 2015

VD (CO)
PSI (23.09.2015)