IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.35422 of 2015
and M.P.Nos 1 to 3 of 2015

M/s.Collective Constructions
[Petitioner]
rep. by its Partner,
No.5, Manickam Pillai Street,
Mannurpet, Chennai 600 050. [Petitioner]

Vs

1 The Assistant Commissioner (CT) FAC
Anna Nagar Assessment Circle
No.1B, Lakshmipuram 2nd Street,
New Avadi Road, Villivakkam,
Chennai - 600 049.

2 The Branch Manager
Indian Bank,
Gummidipoondi Branch,
Gummidipoondi. [Respondents]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling to call for the impugned proceedings of the first respondent in TIN-33361326514/2013-2014/A3, dated 28.10.2015 and the Demand Notice in Form U dated 28.10.2015 attaching the petitioner's bank account in the second respondent bank and quash the same as issued without authority of law and also without granting reasonable opportunity to the petitioner.

For petitioner : Mr.P.Rajkumar

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-33361326514/2013-2014/A3, dated 28.10.2015.

3. The learned counsel for the petitioner submitted that the petitioner, being a civil works contractor engaged in the construction of factories i.e., cement, steel industries etc.,is a registered dealer 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 2013-14, the petitioner reported total and taxable turnover of Rs.3,06,86,491/- under the TNVAT Act. But, the 1st respondent issued notice stating that the petitioner as against the actual turn over of Rs.3,68,70,852/-, have disclosed only Rs.3,06,86,491/- and hence, imposed tax @ 14.5% on the differential turnover of Rs.57,64,781/- and proposed to levy penalty, by the said notice dated 13.08.2015. The petitioner appeared in person and sought time to file the objections. However, an order came to be passed on 24.08.2015 and the same was not served on the petitioner. In the meantime, the respondent issued an 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 24.08.2015. Later on, a xerox copy of the impugned proceedings had been issued to the petitioner. From the perusal of the same, the petitioner ascertained that the first respondent had calculated the tax at the rate of 14.5% on the differential turnover of Rs.57,64,781/- i.e,, Rs.8,35,893/- and the penalty of Rs.12,53,840/- and hence, sought to recover a sum of Rs.20,89,733/-. It is the further contention of the learned counsel for the petitioner that without serving the impugned proceedings which the petitioner is entitled as per Section 45(1) of the TNVAT Act, the first respondent had attached the petitioner's bank account which is illegal and arbitrary. Hence, the petitioner is before this Court.

4. Heard the learned Additional Government Pleader (Taxes) appearing for the respondent on the submissions made by the learned counsel for the petitioner.

5. The dispute herein is with regard to service of the assessment order on the petitioner, as per the provisions under the TNVAT Act as well as the attachment of the bank account. According to the respondent only after passing the assessment order, the attachment has been made for recovery of arrears. Considering the overall facts and circumstances of the case, this writ petition is disposed of with the following directions:-

(i) The petitioner is directed to pay 25% of the demanded tax in the impugned proceedings and on production of proof of such payment,

(ii) the bank attachment effected by the 1st respondent is directed to be lifted forthwith and on such an order being communicated to the 2nd respondent, the 2nd respondent Bank is directed to permit the petitioner to operate their bank account over and above the sum of Rs.20 Lakhs.

It is needless to mention that, it is always open to the petitioner to challenge the assessment order in question, in the manner known to law. No costs. Connected miscellaneous petitions are closed.
Smi

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub-Assistant Registrar

To

1 The Assistant Commissioner (CT) FAC
Anna Nagar Assessment Circle
No.1B, Lakshmipuram 2nd Street,
New Avadi Road, Villivakkam,
Chennai - 600 049.

2. The Branch Manager,
Indian Bank,
Gummidipoondi Branch,
Gummidipoondi

+1 C.C. To MR.P.Rajkumar, Advocate in SR.NO.60217

W.P.No.35422 of 2015

SV(CO)
sd : 05/11/2015