IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-03-2015

CORAM :

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P. No. 5670 of 2015
and
M.P. No. 1 of 2015

M/s. ARSS-ANPR JV
represented by its Authorised Signatory/
Power of Attorney Holder
Mr. Umakanta Patnaik
No.7, Aziz Mulk 8th Street
Thousand Lights
Chennai - 600 006 ... Petitioner

Versus

1. The Appellate Deputy Commissioner (CT)
   Central Station, PAPJM Building
   Greams Road, Chennai - 600 006

2. The Assistant Commissioner (CT)
   Nandanam Assessment Circle
   46, Greenways Road
   R.A. Puram
   Chennai - 600 028

3. The Chief Engineer (Construction)
   Southern Railways
   Egmore, Chennai - 600 008 ... Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the second respondent to recall the garnishee order and notice dated 19.08.2014 in TIN/33361582594/2013-14/A3 pursuant to the order in AP No.05/2015 VAT, AP No.06/2015 VAT, AP.No.07/2015 VAT, AP.No.08/2015 VAT dated 02.02.2015 of the Appellate Authority, the first respondent setting aside the assessment and penalty imposed for the years 2008-2009, 2009-2010, 2010-2011 and 2011-2012 in respect of the petitioner's firm.

For Petitioner : Mr. R.C. Manaoharan
For Respondents : Mr. Manoharan Sundaram
Additional Government Pleader (Tax) for RR1 & 2
Mr. A.P. Srinivas for R3

ORDER

The petitioner company is engaged in doing civil contract works for the third respondent/Railways. On 03.05.2013, the Commercial Tax Officer, Nandanam Assessment Circle has passed an order of assessment for the assessment years 2008-2009, 2009-2010, 2010-2011 and 2011-2012. Aggrieved by the same, the petitioner has filed WP Nos. 28393 to 28396 of 2014 before this Court. In the meantime, on 19.08.2014, the second respondent issued a garnishee order to the third respondent thereby a charge was created over the amount payable by the third respondent to the petitioner. In and by the said notice dated 19.08.2014, the second respondent requested the third respondent to deposit the amount which they have to pay to the petitioner at an early date. Subsequently, the writ petitions filed by the petitioner were taken up by this Court and by an order dated 30.10.2014, this Court, while dismissing the writ petitions, pointed out that the order of dismissal will not stand in the way of the petitioner preferring an appeal under the provisions of the Act and if such an appeal is preferred within 30 days thereof, the appellate authority shall consider such appeal and not to reject it on the ground of limitation. Pursuant to the order dated 30.10.2014, the petitioner preferred statutory appeals before the first respondent challenging the order of assessment dated 03.05.2013 of the assessment officer. The first respondent had taken up the appeals preferred by the petitioners and by an order dated 02.02.2015 the first respondent set aside the order of assessment and remanded the matter back to the assessing officer for fresh consideration. Therefore, the petitioner submitted a representation dated 03.02.2015 to the second respondent to lift the garnishee order in Form U sent to the third respondent in the light of the order dated 02.02.2015 passed in the appeals preferred by them. As there was no response, the petitioner sent another representation on 19.02.2015 reiterating their request to lift the garnishee order issued to the third respondent. Thereafter, the petitioner has filed the present writ petition for a Mandamus directing the second respondent to recall the garnishee order and notice dated 19.08.2014 issued to the third respondent in the light of the order dated 02.02.2015 passed by the first respondent.

2. The learned counsel appearing for the petitioner would contend that when once the assessment order dated 03.05.2013 of the assessing officer itself is set aside, the garnishee order dated 19.08.2014 sent by the second respondent to the third respondent will have no force under law. The learned counsel further stated that in the light of the order dated 02.02.2015 passed by the first respondent in the statutory appeals preferred by the petitioner, they have submitted representations dated 03.02.2015 and 19.02.2015 to the second respondent, but so far, the garnishee order dated 19.08.2014 has not been recalled.

3. On the above contention of the learned counsel for the

petitioner, this Court heard the learned Additional Government Pleader appearing for the respondents 1 and 2 as well as the learned standing counsel appearing for the third respondent and perused the materials placed on record.

4. It is seen from the records that the order of assessment dated 03.05.2013 was passed against the petitioner by the Assessing Officer determining the tax liability together with penalty payable by the petitioner for the assessment years 2008-2009 to 2011-2012. Challenging the orders of assessment dated 03.05.2013, the petitioner filed WP Nos. 28393 to 28396 of 2014 before this Court. In the meantime, on the basis of the order of assessment dated 03.05.2013 passed by the assessing officer, the second respondent sent a garnishee order dated 19.08.2014 and requested the third respondent to pay the amount which they are liable to pay to the petitioner. Subsequently, the writ petitions filed by the petitioner were taken up by this Court. Even though the writ petitions were dismissed by this Court on 30.10.2014, liberty was given to the petitioners to question the validity of the orders of assessment by filing statuutory appeals before the appellate Authority. Accordingly, the petitioner filed statutory appeals before the first respondent/ appellate Authority. By an order dated 02.02.2015, the first respondent set aside the orders of assessment passed by the assessing officer and remanded the matter back to the assessing officer for fresh consideration. Therefore, the garnishee order dated 19.08.2014 passed by the second respondent, on the basis of the assessment order dated 03.05.2013 passed by the assessing officer has no force of law. In the light of the order passed by the appellate authority on 02.02.2015, the petitioner submitted representations on 03.02.2015 and 19.02.2015 seeking to recall the garnishee order sent to the third respondent, but so far no order has been passed.

5. In the light of the above facts, the second respondent is directed to consider the representations dated 03.02.2015 and 19.02.2015 of the petitioner for recalling the garnishee order dated 19.08.2014 sent by the second respondent to the third respondent by taking note of the orders dated 02.02.2015 passed by the Appellate Authority in the appeals preferred by the petitioner against the orders of assessment for the assessment years 2008-2009 to 2011-2012 and pass orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rsh

To

1. The Appellate Deputy Commissioner (CT)
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2. The Assistant Commissioner (CT)
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   46, Greenways Road
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3. The Chief Engineer (Construction)
   Southern Railways
   Egmore, Chennai - 600 008

+1cc to Mr.AP.Srinivas, Advocate, S.R.No.15037
+1cc to Mr.RC.Manaoharan, Advocate, S.R.No.15294
+1cc to the Special Government Pleader(Taxes), S.R.No.15069

WP No. 5670 of 2015

CA(CO)
CA(06/04/2015)