*IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of decision: 21st September, 2015**

+ **W.P.(C) No. 9068/2015**

GROUPE SEB INDIA PRIVATE LIMITED ..... Petitioner
Through: Mr. Ankur Mittal, Adv.

Versus

COMMERCIAL TAXES DEPARTMENT & ANR...... Respondents
Through: None.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

CM No.20523/2015 (for exemption)

1. Allowed, subject to just exceptions.

2. The application is disposed of.

W.P.(C) NO.9068/2015 & CM No.20522/2015 (for stay)

3. The petition *inter alia* challenges the attachment effected by the respondent no.1 Commercial Taxes Department, Chennai, Tamil Nadu of a sum of Rs.24,39,330/- in the account of the petitioner Company with the respondent no.2 ING Vysya Bank Limited towards the arrears of sales tax for the year 2006-2007 owed by one M/s Maharaja Appliances Limited.

4. It is the contention of the petitioner Company that though it was earlier known as M/s Maharaja Whiteline Industries Private Limited and upon takeover of shareholding of which by SEB International SAS, France changed its name to the present name but the Company of which the sales

tax arrears are claimed to be due was a separate and distinct legal entity and the sales tax arrears of which cannot be recovered from the petitioner Company.

5. The grievance of the petitioner Company being against the action of the respondent no.1, it has straightway been enquired from the counsel for the petitioner Company as to how the territorial jurisdiction of this High Court has been invoked.

6. The counsel for the petitioner Company has sought to justify the territorial jurisdiction of this Court by contending that the account of the petitioner Company with the respondent no.2 Bank is at Delhi and thus this Court would have territorial jurisdiction.

7. However on enquiry whether not the said bank account of the petitioner Company is an inter-city account, the counsel for the petitioner Company though replying in the affirmative states that, that is so with respect to all bank accounts today.

8. I am of the view that even if this Court were to have territorial jurisdiction, and qua which I entertain serious doubts, the appropriate High Court to entertain the challenge if at all maintainable, by the petitioner Company is the High Court of Madras within whose territorial jurisdiction the respondent no.1 with whose action the petitioner Company is aggrieved, is situated.

9. I may in this regard notice that the attachment appears to have been effected as far back as prior to 26th July, 2013. It appears that the respondent

no.2 Bank, perhaps at the behest of the petitioner Company, had sought certain clarifications from the respondent no.1 and which were rendered by the respondent no.1 vide letter dated 26th July, 2013 which is impugned in this writ petition.

10. The petition also impugns the notice dated 8th September, 2015 of the respondent no.1 addressed to the petitioner Company at its Chennai address. The said communication though titled as 'Notice' is in fact a decision on the representation made by the petitioner Company to the respondent no.1 contending that the petitioner Company is not liable for the subject sales tax dues. The Assistant Commissioner (CT) of the respondent no.1 by the said communication has rejected the representation of the petitioner Company, holding, that two of the Directors of the petitioner Company and M/s Maharaja Appliances Limited owing the taxes were common and that the petitioner Company as per Section 46 of the Tamil Nadu Value Added Tax Act, 2006 is liable to pay the sales tax arrears of M/s Maharaja Appliances Limited.

11. It is thus evident, (i) that the petitioner Company has an office at Chennai; and, (ii) that the petitioner Company prior to approaching this Court had represented to the respondent no.1. It is felt that since the petitioner Company has an office at Chennai and is admittedly carrying on business at Chennai, it would not cause any inconvenience to the petitioner Company to contest the matter at Chennai. On the contrary, this Court would not be the forum conveniens for the respondent no.1 to contest the proceedings. It cannot also be forgotten that the adjudication sought by the

petitioner also entails interpretation and appreciation of the local law of Chennai and with which also the High Court of Madras must be dealing on a daily basis. The matter thus, definitely has a local flavour.

12. Moreover it is not as if the petitioner Company has filed this petition immediately on attachment having been effected. The petitioner Company prior to filing this petition has pursued its remedies departmentally with the respondent no.1 at Chennai and cannot now chose to, against the decision thereon, invoke the territorial jurisdiction of this Court.

13. I have even otherwise during the hearing enquired the relationship of M/s Maharaja Appliances Limited owing the sales tax dues and the petitioner Company. I may mention that the petitioner Company in the petition has chosen not to disclose the same and has emphasised on M/s Maharaja Appliances Limited whose dues are sought to be recovered from the petitioner Company being an entirely different legal entity. However the petitioner in the petition, in Ground (xii) has given an inkling of the relationship by pleading that at the time when the French Company took over the shareholding of M/s Maharaja Whiteline Industries Private Limited, it had obtained an undertaking dated 15th November, 2011 from M/s Maharaja Appliances Limited that M/s Maharaja Whiteline Industries Private Limited will not be liable for any dues of M/s Maharaja Appliances Limited. In my view, the occasion for the petitioner Company taking such undertaking would have arisen, only on account of the possibility existing therefor. I have rather enquired from the counsel for the petitioner Company of the exact relationship.

14. The counsel for the petitioner Company states that even he is not fully aware of the same.

15. I have further enquired from the counsel for the petitioner Company whether the petitioner Company has taken any action against M/s Maharaja Appliances Limited who are stated to be still in business and having several bank accounts, under the undertaking obtained.

16. The counsel replies in the negative.

17. It thus appears that the matter as to the liability if any of the petitioner Company will have to be adjudicated, if not in writ jurisdiction, then departmentally by the respondent No.1 and direction wherefor can also be best given by the High Court of Madras only.

18. It has been held by the five Judge Bench of this Court in ***M/s Sterling Agro Industries Vs. Union of India*** AIR 2011 Del. 174 that the Court even if having territorial jurisdiction can refuse to exercise the same if some other High Court is found to be forum conveniens.

19. For all the reasons stated above, this Court is not found to be the forum conveniens. This Court therefore refuses to entertain this petition. The petitioner Company of course shall have liberty to approach the appropriate High Court / forum.

20. The counsel for the petitioner Company at this stage states that the respondent no.1, vide Notice dated 8th September, 2015, had asked the petitioner Company to remit the amount of Rs.24,39,330/- within seven days and the petitioner Company apprehends that the respondent no.2 Bank may

remit the said amount out of the bank account of the petitioner Company to the respondent no.1 before the petitioner Company avails of the opportunity in the High Court of Madras or before the appropriate fora in Madras. He seeks time of two weeks to approach the appropriate High Court / fora and protection till then.

21. The aforesaid request of the petitioner Company is found to be reasonable.

22. The writ petition is disposed of with the direction to the respondent no.2 Bank to not remit the sum of Rs.24,39,330/- or any other amount from the account of the petitioner Company to the respondent no.1 till 9th October, 2015. The same is however subject to the petitioner Company maintaining a minimum balance of Rs.25 lacs in its account with the respondent no.2 Bank.

No costs.

Copy of this order be given *dasti* under signature of Court Master.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 21, 2015
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