IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.15297 of 2016
and
W.M.P.No.13359 of 2016

Sri.Nanthiniy Spinners
94/2, Jothipalayam Road
Palappampatti, Myvadi Post
Udumalpet-642 126
Represented by its Managing Partner
Tiruppur District ... Petitioner

Vs.

1. The Appellate Deputy Commissioner
   Commercial Taxes
   Pollachi
   Tiruppur District

2. The Assistant Commissioner
   Commercial Taxes
   Udumalpet
   Tiruppur District ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the respondents herein to raise the order of attachment made by the respondent in respect of the petitioner's properties in S.No.94, 94/2 of Kannamanayakanur Village, Udumalpet Taluk, Tiruppur District.

For Petitioners : Mr.P.Srinivas

For Respondents : Mr.Manoharan Sundaram
Additional Government Pleader

O R D E R

Heard Mr.P.Srinivas, learned counsel appearing for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader appearing for the respondents. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for final disposal.

2.The petitioner has filed this writ petition praying for issuance of writ of mandamus to raise the order of attachment made by the second respondent in respect of the petitioner's property in S.Nos. 94 and 94/2 of Kannamanayakanur Village, Udumalpet Taluk, Tiruppur District. The petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act (TNVAT Act) on the file of the second respondent was issued with a notice by the second respondent proposing to revise the total and taxable turnover for the Assessment years 2007-08 to 2012-13. The petitioner filed their objections and an order of attachment has been passed on 13.11.2015 re-fixing the total turnover of the petitioner and demanding additional tax and penalty. As against the said order, the petitioner has preferred appeals before the first respondent on 28.12.2015 and the appeals are pending.

3. The petitioner's contention is that earlier they had filed writ petitions challenging the pre-revision notice proposing to revise the assessment for the Assessment years 2007-2008 to 2011-2012 in W.P.Nos. 6156 to 6160 of 2013 and the writ petitions were disposed of directing the petitioner to submit their objections within a stipulated time and the second respondent was directed to consider the objections. The petitioner once again came before this Court by filing W.P.Nos.4963 to 4968 of 2014 challenging the orders of assessment dated 30.01.2014 for the above mentioned years stating that their objections have not been considered by the second respondent/Assessing Officer. This Court, on a undertaking given by the petitioner to deposit 50% of the demand made by the second respondent, passed an order directing the petitioner to deposit 50% of the demand and the second respondent was directed to afford an opportunity of personal hearing and thereafter, pass orders on merits and in accordance with law.

4. In terms of the undertaking given, 50% of the tax has been remitted by the petitioner. Thereafter, orders of assessment dated 30.10.2015/13.11.2015 came to be passed, against which appeals are pending. The petitioner's contention is that even before the orders of assessment could be passed, the second respondent passed an order on 11.09.2015 attaching the petitioner's property, which has been entered as an encumbrance in the petitioner's property on 15.05.2015 and reflected in the Encumbrance Certificate.

5. In my view, at this stage of the matter, the attachment cannot be permitted to be raised, more so, when the revised assessment orders have not attained finality till 2014. However, taking note of the fact that the petitioner had already remitted 50% of the tax as demanded by the second respondent, the Appellate Authority could be directed to

dispose of the appeals pending on its file without insisting upon any further payment.

6. In the light of the above discussion, while directing that the order of attachment of the petitioner's property to continue, there will be a direction to the first respondent to dispose of the appeals filed by the petitioner on 28.12.2015 for the Assessment Years 2007-08 to 2012-13 without insisting upon further payment, as 50% of the demand has already been paid based on the earlier order passed by this Court. The first respondent shall afford an opportunity of personal hearing to the petitioner and decide the appeals within a period of four weeks from the date of receipt of a copy of this order. The order of attachment shall abide by the ultimate orders to be passed by the first respondent/appellate authority.

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

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Appellate Deputy Commissioner
   Commercial Taxes
   Pollachi
   Tiruppur District

2. The Assistant Commissioner
   Commercial Taxes
   Udumalpet
   Tiruppur District

+1cc to Mr.P.Srinivas, Advocate, S.R.No.31900
+1cc to the Special Government Pleader(T), S.R.No.32021

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NR(CO)
CA(21/06/2016)