In the High Court of Judicature at Madras

Dated : 20.7.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.25130 of 2016 & WMP.No.21525 of 2016

M/s.Ashok Kumar Spinning Mills,
rep.by its Partner P.Mani
Udumalpet, Coimbatore District ...Petitioner

Vs

The Assistant Commissioner (CT),
Udumalpet (North) Assessment Circle,
Udumalpet, Coimbatore District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in Form I Distraint Order in TIN No. 33502481804/2015/A3 dated 8.6.2016, quash the same as illegal and direct the respondent to refund the advance tax amount of R.1,75,000/- to the petitioner, which was collected without any demand.

For Petitioner : Mr.S.Ramanathan
For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader takes notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act) and the Central Sales Tax Act, 1956 (hereinafter referred to as the CST Act) on the file of the respondent, has challenged a distraint notice issued under Section 8 of the TNVAT Act.

3. From the facts placed before this Court and the typed set of documents filed along with the writ petition, it is seen that the action initiated by the respondent is solely illegal. This conclusion is substantiated with the following reasons :

4. A notice dated 28.9.2015 was issued to the petitioner for the assessment year 2009-10 claiming arrears of tax of Rs.5 lakhs. The petitioner submitted a representation dated 3.11.2015 and sent the same by registered post to the respondent, which has been received by him on 5.11.2015 as per the postal acknowledgment card. In the said representation, the petitioner stated that the petitioner was intimidated and compelled to issue cheques for Rs.5 lakhs by the officials of the Enforcement Wing and subsequently, on legal advice, they came to know that no advance tax shall be paid to the officials of the Enforcement Wing during inspection.

5. That apart, the petitioner pointed out that no assessment order under the CST Act for the assessment year 2009-10 has been passed and served on the petitioner and therefore, the claim for arrears is unsustainable. In the meantime, a sum of Rs.50,000/- was encashed by the respondent and another distraint order dated 16.11.2015 was issued to the petitioner demanding a sum of Rs.4.5 lakhs mentioning the assessment year as 2015-16. Once again, the petitioner represented to the Authorities stating that no assessment order has been issued to the petitioner and there cannot be any demand for the assessment year 2015-16. It also appears that the petitioner was compelled to pay Rs.1 lakh and another distraint notice was issued on 7.3.2016 demanding a sum of Rs.3.5 lakhs mentioning the assessment year as 2015-16. Subsequently, the petitioner was coerced to pay another sum of Rs.50,000/- and ultimately, the impugned order has been passed demanding Rs.3.25 lakhs.

6. Having been put to such harassment, the petitioner sent a detailed representation to the respondent on 5.7.2016 pointing out the fact that a sum of Rs.1.75 lakhs has been illegally collected from the petitioner by intimation without any arrears. It is not known as to how the officials of the Enforcement Wing could have compelled the petitioner to pay the said sum claiming towards advance tax. That apart, the distraint order refers to the assessment year 2015-16 whereas the notice of the respondent dated 28.9.2015 shows the assessment year as 2009-10. In any event, the manner in which, the respondent proceeded is wholly illegal and the distraint proceedings initiated against the petitioner cannot be sustained.

7. Accordingly, the writ petition is allowed and the impugned order is set aside. It is left open to the respondent to proceed in accordance with law after affording an opportunity to the petitioner. It is always open to the petitioner to pursue their request for refund of the said sum of Rs.1.75 lakhs after

assessment proceedings are initiated by the respondent. No costs. Consequently, the above MP is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Assistant Commissioner (CT),
Udumalpet (North) Assessment Circle,
Udumalpet, Coimbatore District.

+1 cc to Mr.S.Ramanthan Advocate sr.41549
+1 cc to Special Government Pleader Taxes sr.41096

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