IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.09.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos. 28173 and 28174 of 2012
and
W.P.No.21494 of 2014
+
M.P.Nos.1 & 1 of 2012 and 2 of 2014.

1. M/s.A.A.Chef,
rep. by its Partner, N.Anand.
...Petitioner in W.P.No.28173 of 2012

2. M/s.A.A.Poultry Farm (P) Ltd.,
Earlier known as Coimbatore Chemicals and Fertilizers Ltd.,
rep. by its Director, N.Anand.
...Petitioner in W.P.No.28174 of 2012

3. N.Anand
...Petitioner in W.P.No.21494 of 2012

Vs.

The Commercial Tax Officer (CT)
Now Upgraded as Assistant Commissioner (CT)
Mettupalayam Road Assessment Circle,
Commercial Taxes Building,
Balasundaram Chettiar Road,
Coimbatore- 641 018.
...Respondent in W.P.Nos.28173 and 28174 of 2012

1. The Assistant Commissioner (FAC)
Mettupalayam Road Assessment Circle,
Coimbatore.
...R-1 in W.P.No.21494 of 2014.

2. The State of Tamil Nadu,
rep. by its Secretary to Government,
Registration and Commercial Taxes Department,
Fort St. George, Chennai - 600 009.
...R-2 in W.P.No.21494 of 2014.

Prayer in W.P.No.28173 of 2012

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent in Form No.4, Notice (Asst.No.2001507/99-2000, (Ref No.854/2002/A3, and to quash the impugned proceedings, dated 13.09.2012, and further to direct the respondent to follow the procedure in accordance with the provisions of the Tamil Nadu General Sales Tax Act 1959.

Prayer in W.P.No.28174 of 2012

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent in Form No.4, Notice (Asst.No.2000048/1999-2000, (Ref No.854/2002/A3, and to quash the impugned proceedings, dated 13.09.2012, and further to direct the respondent to follow the procedure in accordance with the provisions of the Tamil Nadu General Sales Tax Act 1959.

Prayer in W.P.No.21494 of 2014:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari call for the records of the first respondent in Auction Notice in N.K.218/2014 (A-2) dated 05.03.2014, initiated under Section 27 of the Tamil Nadu Revenue Recovery Act, 1864, for auction sale of agricultural land, comprised in S.No.N.K.61/1, measuring 2.89 acre, S.No.62, measuring 5.70 acre and S.No.62/1B, measuring 4.72 acre totaling to 7.61 acre along with pump set with motor, being self acquired property of the petitioner in 1996, and to quash the same as ultravires of the provisions of the Tamil Nadu General Sales Tax Act 1959, read with Section 27 of the Tamil Nadu Revenue Recovery Act, 1864.

For Petitioner in all W.Ps. :Mr.V.Sundareswaran

For Respondents in all W.Ps. :Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON O R D E R

Heard Mr.V.Sundareswaran, learned counsel appearing for petitioners, and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, for respondents.

2. Totally, there are three Writ Petitions. Two Writ Petitions, viz., W.P.Nos.28173 and 28174 of 2012, are filed by Partnership Firm, represented by its Partner, N.Anand, and W.P.No.21494 of 2014 is filed by the Partner, N.Anand, in his personal capacity.

3. First, this Court proposes to take up the Writ Petitions filed by the Partnership Firms, being W.P.Nos.28173 and 28174 of 2012. In both the Writ Petitions, the petitioner has challenged the notices of demand issues in Form No.4, being arrears of sales tax, payable by the petitioners for the assessment year 1999-2000, under the provisions of Tamil Nadu General Sales Tax Act 1959 (TNGST Act).

4. The petitioner's contention is that, without even granting an opportunity, the respondent has finalized the assessment, and prays that they may be granted an opportunity to appear before the Assessing Officer, and place all documents. The petitioner would further state that, their inability to appear before the Assessing Officer along with books of accounts was on account of the fact that the business premises was sealed by the Economic Offence Wing, as the petitioner's father, R.Natarajan, was carrying on a Chit Fund Business, in the premises, under the name and style "Indian Commercial Syndicate". Though the petitioner sought for time to produce books of accounts, they were unable to do so, which resulted in issuance of impugned notices for recovery. The petitioner challenges the same on the ground that, the notices were issued without granting opportunity to the petitioner to putforth their contentions.

5. At the time, when the Writ Petitions were entertained, this Court, granted interim stay, subject to the condition that the petitioner in W.PNo.28173 of 2012, pays Rs.60,000/- and the petitioner in W.P.No.28174 of 2012, pays Rs.5,00,000/- to the respondent. It is submitted that the conditional orders have been complied with. The property, which is the subject matter of attachment, pursuant to the order impugned in W.P.No.21494 of 2014, is claimed to be the personal property of the petitioner, and for the default committed by the petitioner's father, R.Natarajan, who is the Partner of Indian Commercial Syndicate, the subject property cannot be attached.

6. Sofar as the Writ Petitions challenging the notices of recovery are concerned, viz., W.PNo.28173 and 28174 of 2012, taking note of the submissions made by the learned counsel appearing for the petitioner that the entire amount payable to all the subscribers of the Chit transaction, run by the petitioner's father, R.Natarajan has been fully paid, and all proceedings initiated by Economic Offence Wing under the provisions of Tamil Nadu Protection of Interest of Depositors Act, 1997, had been concluded, the petitioner could be granted an opportunity to appear before the Assessing Officer, and place all the available documents, so that, the assessment for the

relevant year, i.e., 1999-2000, under the TNGST Act could be completed on merits.

7. Insofar as other Writ Petition, viz., W.PNo.21494 of 2014, challenging the order of attachment is concerned, since it is the case of the petitioner that the property, which is the subject matter of attachment, is not liable for attachment, this issue could also be agitated before the Assessing Officer, since it involves adjudication into disputed facts.

8. Accordingly, the notices issued in Form No.4, which are impugned in W.P.Nos.28173 and 28174 of 2012, are set aside for the present, as the matter is remanded for fresh consideration, and the petitioner
is directed to file written objections within a period of two weeks from the date of receipt of a copy of this order, along with supportive documents, and, on receipt of the same, the Assessing Officer shall afford an opportunity of hearing to the petitioner and redo the assessment in accordance with law, after considering the available documents with the petitioners.

9. Insofar as order of attachment is concerned, the order impugned in W.P.No.21494 of 2014, the same shall continue, and the petitioner is granted an opportunity to file a representation before the Assessing Officer/competent Authority, within a period of two weeks from the date of receipt of a copy of this order, setting out clearly as to how the property is not liable for attachment, and on receipt of the representation, the Assessing Officer/Competent Authority shall consider the petitioner's representation and after conducting enquiry and affording opportunity of personal hearing, pass appropriate orders in accordance with law. The amounts, which have been paid by the petitioner, pursuant to the interim orders granted by this Court shall be adjusted towards the tax dues after the assessment is redone in terms of the direction issued hereinabove, and till orders are passed, the properties in question shall not be brought for sale.

10. In the result, the Writ Petitions are disposed of with the above directions. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer (CT)
   Now Upgraded as Assistant Commissioner (CT)
   Mettupalayam Road Assessment Circle,
   Commercial Taxes Building,
   Balasundaram Chettiar Road,
   Coimbatore- 641 018.

2. The Assistant Commissioner (FAC)
   Mettupalayam Road Assessment Circle,
   Coimbatore.

3. The Secretary to Government,
   The State of Tamil Nadu,
   Registration and Commercial Taxes Department,
   Fort St. George, Chennai - 600 009.

1 cc to The Special Government Pleader, (Taxes), sr.51176
3 ccs to Mr.V.Sundareswaran, Advocate, sr.50414

Writ Petition Nos. 28173 and 28174 of 2012
and
W.P.No.21494 of 2014

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kra 22.09.2016