IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.6961 of 2016
&
W.M.P.No.6178 of 2016

M/s.Atchaya Engineering Pvt. Limited
Rep.by its Managing Director
Mr.A. Mohan
No.75-F Thamaraikulam 1st Street
Periyathoppu, Manali
Chennai-600 068. ... Petitioner

Vs.

1. The Additional Commissioner
Large Taxpayer Unit
1775 Jawaharlal Nehru
Inner Ring Road
Anna Nagar Western Extension
Chennai-600 101.

2. The Assistant Commissioner
Service Tax I Commissionerate
Division I (Thiruvottiyur)
Newry Towers, 1st Floor
2nd Main Road, Anna Nagar
Chennai-600 040.

3. The Additional Commissioner
Office of the Commissioner of Service Tax
692 MHU Complex, Nandanam
Chennai-600 035

4. The Commissioner of Central Excise (Appeals)
123 Mahatma Gandhi Road
Nungambakkam
Chennai-600 034.

5. The Branch Manager
Indian Bank
18, Nedunchezhiyan Salai
Manali, Chennai-600 068. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st, 2nd and 3rd respondents to refrain from taking any coercive recovery proceedings against the petitioner company for recovery of the dues said to be payable by M/s.Atchaya Enterprises.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.A.P.Srinivas
Standing Counsel

ORDER

The petitioner has filed the above writ petition to issue a Writ of Mandamus to direct the respondents 1 to 3 to refrain from taking any coercive recovery proceedings against their company for recovery of the dues said to be payable by M/s.Atchaya Enterprises.

2. It is the case of the petitioner that the Director of the petitioner company was the proprietor of M/s.Atchaya Enterprises, which was engaged in the business of providing erection, commissioning and installations services and they are registered with the Service Tax Department from 10.07.2007. During verification by the officers of the second respondent, it was noticed from the returns filed by M/s.Atchaya Enterprises that they had provided taxable services to some companies. It was noticed that M/s.Atchaya Enterprises had charged and collected service tax from the recipients of services and had remitted the same to the Service Tax Department. The third respondent issued a show cause notice on 29.02.2012 calling upon M/s.Atchaya Enterprises to show cause as to why service tax should not demanded from them in respect of some of the companies. The said Enterprises sent their reply dated 20.12.2013 and produced challans of service tax payments made by these service recipients. The first responder, without considering the submissions made by M/s.Atchaya Enterprises, passed an order dated 25.02.2014, confirming the proposal as contained in the show cause notice dated 29.02.2012 and demanded a service tax amount of Rs.19,92,075/- along with interest and also imposed an equivalent penalty under the provisions of section 78 of other Finance Act. M/s.Atchaya Enterprises has filed an appeal against the order dated 25.02.2014. In the meanwhile, the respondent has issued a notice to the 5th respondent attaching the bank account of the petitioner company. The bank account of the petitioner company was attached on the ground that another entity has not paid the service tax as demanded in the order dated 25.02.2014.

3. Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner submitted that the bank account of another entity cannot be attached for the dues of some other entity. In support of his contention, the learned counsel relied upon the following judgments:-

(i) 2014(304) E.L.T. 360 (Del) [Freezair India (P) Ltd. v. Commissioner of Central Excise, Delhi-1] wherein, the Division Bench of Delhi High Court held as follows:-

"12. On the face of it, there has been an extraordinary and serious error in the impugned order passed, which is of a basic or fundamental nature. The appellant herein was incorporated only on 29th January, 1998 and came into existence on the said date as a separate juristic entity and a legal person. It was registered under the Act and started manufacturing activities from 1st April, 1998. The appellant could not have indulged in clandestine and wrong sales prior to 29th January, 1998 as it was not in existence and was not carrying on manufacturing activities till 31st March, 1998. Before the said date, Kuldeep Singh Punn in his individual capacity as a sole proprietor of Freezair India was carrying on the business of manufacture and sales of air conditioner and cooling units from the same premises from where the appellant started operating. However, this does not mean that the appellant company is the same person as Kuldeep Singh Punn, sole proprietor of Freezair India. A company once incorporated in accordance with the law is a juristic person, a body corporate capable of being sued and with the right to sue a third person. A company in law is a different person, altogether from the subscribers of the memorandum and the promoter directors. Company's debts are the obligations of the company and similarly the promoter's debts are obligation of the promoters and cannot be normally recovered from the other. Principle of independent corporate existence of a registered company is of great significance and cannot be ignored except in the case of statutory mandate or when the corporate veil is required to be pierced for exceptional and good reasons. These are extraordinary situations when the law goes behind the corporate personality and ignores the legal entity of justifiable, sound and adept reasons."

(ii) 2005(187) ELT.178 (Guj) [Rupali Dyeing & Printing Mills v. Union of India] wherein, the Division Bench of Gujarath High Court held as follows:-

"5.As can be seen from the impugned notice (Annexure "A"), it is a notice of demand to defaulter. The learned counsel for the respondents has not been able to show from any material on record that the petitioner has been declared to be a defaulter in accordance with requirements of law in this regard. The averment that the said notice was issued without hearing the petitioner is also not denied. The entire case of revenue is based on one Shri Rajesh Jain, being an erstwhile partner of M/s Rangoli Prints, and presently, being a partner of the petitioner firm having committed to discharge liability of M/s Rangoli Prints. As noted hereinbefore, despite categorical statement made in the affidavit in rejoinder denying any undertaking by Shri Rajesh Jain vide letter dated 15th April, 2003, respondents have failed to produce any such document. In these circumstances, it is apparent that there is no evidence to link the petitioner firm with M/s Rangoli Prints. The only tenuous link, according to revenue, is the common partner Shri Rajesh Jain. Even if the said fact is admitted and accepted, all that can happen in the circumstance is that Shri Rajesh Jain, in his individual capacity as an erstwhile partner of M/s Rangoli Prints would become liable to discharge liability of that firm, of course subject to any explanation that he may have. However, in so far as the petitioner firm is concerned, it is not possible to accept the stand of the revenue that liabilities of M/s Rangoli Prints have been taken over by the petitioner firm in absence of any evidence in this regard. Needless to state that the petitioner firm, Shri Rajesh Jain, as an erstwhile partner of M/s Rangoli Prints, and M/s Rangoli Prints are three different entities and the action of the respondent authorities in treating all the three as one and the same, is not tenable in law."

4. Mr.A.P.Srinivas, learned Standing counsel appearing for the respondents submitted that the petitioner company was incorporated only to circumvent the demand made by the respondents as against the proprietorship concern, viz., M/s.Atchaya Enterprises. Further, the Standing Counsel submitted that since the director of the petitioner company was the proprietor of M/s.Atchaya Enterprises, the respondents had no other option except to attach the bank account of the petitioner.

5. It is pertinent to note that the petitioner company was incorporated as a Private Limited Company on 23.6.2011. The show cause notice was issued to M/s.Atchaya Enterprises, on 29.02.2012 and the first respondent passed the order dated 25.2.2014 demanding service tax amount of Rs.19,92,075/- on 25.02.2014. Though the order dated 25.2.2014 was passed as against M/s.Atchaya Enterprises, the respondents 1 to 3 proceeded against the petitioner company, which is a Private Limited Company by attaching its bank account held with the 5th respondent.

6. The ratios laid down in the judgements relied upon by the learned counsel appearing for the petitioner squarely applies to the facts and circumstances of the present case.

7. When the petitioner company is a separate and independent entity, the bank account of the petitioner company cannot be attached for the dues of the proprietorship concern, viz., M/s.Atchaya Enterprises.

8. In these circumstances, I am of the view that the bank account of the petitioner company, which was attached by the respondents 1 to 3, is liable to be raised. Accordingly, the attachment in respect of the petitioner company stands raised.

With these observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Rj

To

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+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.14259
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.14442

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CA(07/03/2016)