



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)Nos.14497 and 14529 of 2016

and

W.M.P. (MD)Nos.10745, 10746 and 10789 of 2016

M/s Raja Enterprises,  
No.130, W.B.Road,  
Tiruchirapalli-620 008,  
represented by its Partner.

...Petitioner  
in both petitions

Vs.

1.The Appellate Deputy Commissioner,  
(Commercial Taxes),  
Tiruchirapalli.

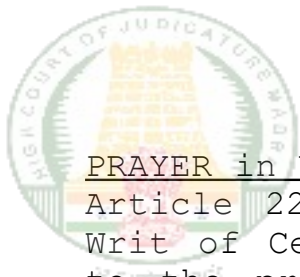
2.The Assistant Commissioner,  
(Commercial Tax),  
Commercial Tax Department,  
Mallam Chantahi I Circle,  
Tiruchirapalli - 620 020.

3.The Branch Manager,  
State Bank of India,  
Commercial Branch,  
Contonment, Tiruchirapalli.

4.The Branch Manager,  
South Indian Bank,  
19/20, Madurai Road,  
Tiruchirapalli.

...Respondents  
in both petitions

PRAYER in W.P.(MD)No.14497 of 2016: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the second respondent herein in Pdl.1/2016/A3, dated 27.07.2016 with Form-U Notice dated 27.07.2016 in respect of petitioner's TIN No.33763580380 and quash the same and direct the second respondent to forthwith return the sum of Rs.2,43,958/- recover by the 2<sup>nd</sup> respondent from the bank accounts of the partners of the petitioner in the fourth



PRAYER in W.P.(MD)No.14529 of 2016: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the second respondent herein bearing TIN No.33763580380/11-12 dated 05.08.2016 and quash the same and direct the second respondent herein to forthwith return the sum of Rs.2,42,958/- recovered by the second respondent herein from the bank accounts of the partners of the petitioner in the fourth respondent Bank.

For petitioner  
in both petitions : Mr.ARL.Sundaresan  
for Mrs.AL.Ganthimathi

For respondents  
in both petitions : Mr.R.Karthikeyan  
(for R1 and R2) Additional Government Pleader  
For R3 : Mr.M.Saravanakumar

\*\*\*\*\*

#### COMMON ORDER

The petitioner, who aggrieved by the notice dated 27.07.2016 and the proceedings dated 05.08.2016 issued by the Assistant Commissioner (Commercial Tax), Mailam Chantahi I Circle, Tiruchirapalli issued to the Branch Manager, State Bank of India, Commercial Branch, Tiruchirapalli requesting the Manager to withhold the account of the petitioner immediately on receipt of the notice and pay the tax amount to the Office of the Assistant Commissioner (Commercial Tax), Mailam Chantahi I Circle, Tiruchirapalli within 24 hours on receipt of notice, has approached this Court by filing these writ petitions.

2. Heard the learned Counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The petitioner has already obtained an order dated 26.08.2015 in W.P.(MD)No.15331 of 2015 which is given as under:

"8. Considering the submission made by either side and following the order passed in the writ petition referred to above, the writ petition is disposed of, with a direction to the petitioner to pay a sum of Rs.3,00,000/- instead of Rs.10,67,897/- as demanded by the first respondent and execute a personal bond instead of furnishing bank guarantee, as required by the appellate authority as a condition for grant of stay. Such a personal bond shall be executed within a period of two months from the date of receipt of a copy of this order. On receipt of the personal bond, the appellate authority is directed to dispose of the appeal on merits. On execution



of the personal bond, the stay granted by the appellate authority shall continue till the disposal of the appeal."

4. The learned Counsel for the petitioner would submit that in view of the above order, the impugned order ought not to have been issued by the Assistant Commissioner (Commercial Taxes), Mailam Chantahi I Circle, Tiruchirapalli which shows that the second respondent being a Quashi Judicial Authority, without application of mind, has discharged her duty. Although she has passed the order inadvertently, this wrong order interrupted the reputation of the petitioner, because of the notice sent to the Branch Manager, State Bank of India, Commercial Branch, Contonment, Tiruchirapalli, with which the petitioner got banking facilities, he is unable to operate with the said Bank.

5. The learned Counsel for the petitioner would further submit that when the second respondent is issuing a direction to the Branch Manager State Bank of India, Commercial Branch, Contonment, Tiruchirapalli, it conveys the message that the petitioner is defaulter. Therefore, on that basis, the petitioner has come forward to this Court.

6. This Court considered the fact that there was an order of stay granted by the appellate authority shall continue till the disposal of the appeal, has passed the following order, by order dated 10.08.2016:

"This Court has passed an order in the Writ Petition in W.P.(MD)No.15331 of 2015 dated 26.08.2015, which reads as follows:

"8. Considering the submission made by either side and following the order passed in the writ petition referred to above, the writ petition is disposed of, with a direction to the petitioner to pay a sum of Rs.3,00,000/- instead of Rs.10,67,897/- as demanded by the first respondent and execute a personal bond instead of furnishing bank guarantee, as required by the appellate authority as a condition for grant of stay. Such a personal bond shall be executed within a period of two weeks from the date of receipt of a copy of this order. On receipt of the personal bond, the appellate authority is directed to dispose of the appeal on merits. On execution of the personal bond, the stay granted by the appellate authority shall continue till the disposal of the appeal."

2. The above said order is clear that on execution of personal bond, the stay granted by the appellate authority shall continue till the disposal of the Appeal.

<https://hcservices.courts.gov.in/hcservices> of the above said order, when the petitioner has also executed the personal bond, thereby, the order of stay has come into operation, it is not known as to



how the second respondent proceeded with the matter, which shows that the second respondent is attempted to overstep the Court's order. Therefore, the second respondent/The Assistant Commissioner (Commercial Tax), Commercial Tax Department, Mailam Chantahi I Circle, Tiruchirapalli, is hereby directed to appear before this Court to explain as to why he proceeded with the matter by ignoring the order of stay granted by the appellate authority.

3. Post the matter on 24.08.2016.

4. In the meanwhile, there shall be an order of interim stay. Notice.

5. Mr. R. Karthikeyan, learned Additional Government Pleader takes notice for the respondents."

7. Pursuant to the same, the second respondent filed an affidavit dated 29.08.2016 expressing unconditional apology. The affidavit shows that she has no intention to violate or disobey the order passed by this Court and she is having highest regard for the orders of this Court and she has been obeying the orders of this Court with all respect and regard. But she was not aware of the conditions made in the order passed in W.P.(MD)No.15331 of 2015, dated 26.08.2015 and she proceeded to recover the tax arrears in the interest of the Government Exchequer. Hence, she prays for a lenient view may be taken by this Court.

8. When this Court has already passed an order on 26.08.2015 stating that the stay granted by appellate Court shall be continued till the disposal of the appeal, the Assistant Commissioner (Commercial Taxes), Mailam Chandai I Officer, Tiruchirappalli cannot say that she was not aware of the condition mentioned in the order of this Court. However, as she has filed an affidavit expressing unconditional apology stating that she has not passed the order deliberately or willfully and considering her future career, this Court, accepting the affidavit filed by the second respondent, set aside the impugned order by directing the second respondent to pay a sum of Rs.5,000/- by way of Demand Draft to the petitioner within two days.

With the above observations, the impugned order is set aside and both the Writ Petitions are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS)  
Madurai Bench of Madras High Court,  
Madurai-23.



To

1.The Appellate Deputy Commissioner,  
(Commercial Taxes), Tiruchirapalli.

2.The Assistant Commissioner,  
(Commercial Tax),  
Commercial Tax Department,  
Mallam Chantahi I Circle,  
Tiruchirapalli - 620 020.

3.The Branch Manager,  
State Bank of India,  
Commercial Branch,  
Contonment, Tiruchirapalli.

4.The Branch Manager,  
South Indian Bank,  
19/20, Madurai Road,  
Tiruchirapalli.

+1cc to the Special Government Pleader, in SR.48099 & 48100

+1cc to M/s.M.Saravakumar, Advocate in SR.48657

+1cc to M/s.AL.Gandhimathi, Advocate in SR.48016

W.P (MD) Nos.14497 and 14529 of 2016  
29.08.2016

ssl

PBK/PV 22/09/2016 ::5P-8C: