IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.6729 of 2017
And
W.M.P.No.7265 of 2017

M/s.HOOP PINE Interior Concepts
Rep. by its Partner Mathew Easow ... Petitioner

Vs.

1 The Commercial Tax Officer
Amaindakarai Assessment Circle,
F/50, Anna Nagar 1st Avenue,
Anna Nagar East,
Chennai - 600 102.

2 M/s.Kotak Mahindra Bank
Block Q-100, Plot No.3698
3rd Avenue, Anna Nagar,
Chennai - 600 040. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records related to the impugned demand notice in A.S.No.14 dated 27.06.2016 issued by 1st respondent and to quash the same; consequently to forebear all the further proceedings, in particular the impugned order dated 16.09.2016 in TIN No.33671026371/2014-2015 and order of attachment dated 27.02.2017 made by the 1st respondent on the petitioners bank account bearing Nos.3011176337 and 3011286999, held in the 2nd respondents Bank (Kotak Mahindra Bank, Anna Nagar Branch).

For Petitioner : Mr.Srenik S.Jain

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) takes notice for the first respondent. Since the second respondent is only a formal party to the issue involved in this case, notice to the second respondent is dispensed with. By consent, the main writ petition itself, is taken up for final disposal at the admission stage.

2.The petitioner is aggrieved against the demand notice dated 27.06.2016 and the consequential order of assessment dated 16.09.2016 followed by the attachment order dated 27.02.2017.

3.Heard both sides.

4.The petitioner is a partnership firm and a notice dated 27.06.2016 was issued by the Assessing Authority calling upon the petitioner to make their objections against the proposal of tax and penalty under Section 27 (4) of the Tamil Nadu Value Added Tax Act, 2006. Though such notice was served on the petitioner, it appears that they have not chosen to file their objections before the Assessing Authority.

5.The reason for not filing such objection is sought to be explained in this writ petition by contending that there were some dispute between the partners which culminated in not filing such objections within the time stipulated before the Assessing Authority. But the fact remains that the petitioner was served with a notice and they have not chosen to file their objection before the Assessing Authority within the time stipulated therein. Consequently, the Assessing Authority passed an order of assessment dated 16.09.2016 reversing the Input Tax Credit under Section 19 (5)(c) of the Tamil Nadu Value Added Tax Act, 2006 and also imposing a penalty under Section 27 (4) of the said Act. Thereafter, the Assessing Authority has issued the attachment order dated 27.02.2017, to the second respondent Bank, since the petitioner has not paid the tax arrears and penalty. Now the writ petitioner has sought to contend before this Court that non filing of objections before the Assessing Authority was neither willful nor wanton and because of the reasons stated supra.

6.This Court at this stage, is not inclined to go into such contention and give any finding on the order of assessment, as the petitioner can very well raise all these objections by way of filing an appeal before the Appellate Authority, challenging the impugned order of assessment.

7.Needless to say, that the Appellate Authority being the fact finding Authority, can go into such aspects and decide the matter on merits and in accordance with law, as the petitioner has failed to file such objections before the Assessing Officer within the time stipulated.

8.Therefore, this Court is of the view that interest of both parties can be protected by passing the following order:

(a)The order of attachment dated 27.02.2017, is hereby raised, on payment of Rs.1,50,000/- (Rupees One Lakh and Fifty

Thousand Only) by the petitioner to the first respondent, within a period of seven days from the date of receipt of a copy of this order.

(b) If the payment is not made by the petitioner within such time, the order of attachment stands restored.

(c) If the petitioner makes such payment, he is entitled to file an appeal, before the Appellate Authority, challenging the order of attachment, within a period of three weeks from the date of receipt of a copy of this order.

(d) If any such appeal is filed, the Appellate Authority shall consider the same on its own merits and in accordance with law without reference to the limitation, if any.

9. It is made clear that this Court has not expressed any view on the merits of the claims made by the either parties as it is for the Appellate Authority to consider it and decide, on merits and in accordance with law.

10. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1 The Commercial Tax Officer
Amaindakarai Assessment Circle,
F/50, Anna Nagar 1st Avenue,
Anna Nagar East,
Chennai - 600 102.

+1CC TO Special Government Pleader sr.17272

+1cc to M/s.P.Subba Reddy,sr.17432

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nr(co)
ss(21/3/2017)