IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2017

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THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.2370 of 2017

WMP No.2355 of 2017

Transtonnels Troy-Afcons Joint Venture
Represented by its Joint General Manager,
New No.A51, Wavoo Magdoom Plaza,
4th Floor, II Avenue, Anna Nagar (East),
Chennai-600 102. .. Petitioner

Vs.

1. The Assistant Commissioner (CT),
   Amaindakarai Assessment Circle,
   No.50, 1st Avenue, Anna Nagar East,
   Chennai-600 102.

2. The Assistant Commissioner (CT),
   Royapettah Assessment Circle,
   Chennai.

3. M/s.Axis Bank,
   Operations Manager,
   F33, II Avenue, Anna Nagar East,
   Chennai-102.

4. Commissioner of Commercial Taxes,
   Chepauk, Chennai-600 005.

5. Government of Tamil Nadu,
   represented by its Secretary,
   Commercial Taxes Department,
   Fort St. George, Chennai-600 009. .. Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, or any other appropriate Writ, order or direction, in the nature of a writ, directing the first respondent to dispose of their application dated 14.10.2016, and consider the amount of advance tax paid and TDS credit due to the petitioner for payment of VAT liability for the month of December 2016 of Rs.69,00,872/- and credit the remaining amount of Rs.98,23,336/- to the petitioner's TIN : 33291025998 in the TSP portal of the TN Commercial Taxes website and pass such other order or orders as the Hon'ble Court may deed fit and proper in the circumstances of the case.

* * *

For Petitioner : Ms.R.Charulatha

For Respondents : Mr.K.Venkatesh, Government Advocate for RR 1, 2, 4 and 5

ORDER

1. Mr.K.Venkatesh, who appears for respondents No.1, 2, 4 and 5, has returned with instructions, apropos, to orders passed yesterday, i.e., 31.01.2017.

2. For the sake of convenience, the order passed on 31.01.2017, is extracted hereafter :

> "...... 1. The learned counsel for the petitioner says that the petitioner is aggrieved by the fact that the respondent has frozen its bank accounts to the extent of Rs.69,00,876.00 (Rupees Sixty Nine lakhs Eight hundred Seventy Six only) on account of the alleged non-payment of VAT liability.
>
> 2. The learned counsel for the petitioner says that, as a matter of fact, the respondent has available with it in the form of advance tax and TDS a sum of Rs.1,67,24,212/- (Rupees One Crore Sixty Seven lakhs Twenty Four thousand two hundred twelve only), and that, if, this sum is adjusted, then, in fact, a surplus amount equivalent to Rs.98,25,336/- (Rupees Ninety Eight lakhs Twenty five thousand three hundred thirty six only) will be left to the credit of the petitioner.
>
> 3. To be noted, these aspects have been adverted by the petitioner in a recent representation dated 18.01.2017 made to the respondent No.1.
>
> 4. Mr.Venkatesh, learned Government Advocate, who appears on advance notice on behalf of the respondents says that he will take instructions in the light of what is stated by the petitioner in its representation dated 18.01.2017.
>
> 5. Re-notify on 01.02.2017."

3. To be noted, via the present writ petition, the following prayer has been made :

> "..... this Hon'ble Court may be pleased to issue a Writ of Mandamus, or any other appropriate

> Writ, Order or direction, in the nature of a Writ, directing respondent No.1, to dispose of their application dated 14.10.2016, and consider the amount of advance tax paid and TDS credit due to the petitioner for payment of VAT liability for the month of December 2016 of Rs.69,00,872/- and credit the remaining amount of Rs.98,23,336/- to the petitioner's TIN : 33291025998 in the TSP portal of the TN Commercial Taxes website and pass such other order or orders as the Hon'ble Court may deed fit and proper in the circumstances of the case. ......"

4. In effect, the petitioner, as indicated on the previous date, prays for adjustment of advance tax and TDS, i.e., withholding tax paid on its behalf against tax liability raised by respondent No.1/Assessing Officer.

5. This aspect forms part of a series of applications / representations made by the petitioner, in that behalf, including the application dated 14.10.2016, to which, a reference has been made by the petitioner in its prayer.

5.1. Furthermore, there are other representations made in that behalf, including the representation dated 18.01.2017, and 27.01.2017.

6. The petitioner is, presently, aggrieved, as it appears, by the communication received from its banker, via, e-mail dated 27.01.2017, which is appended at page No.31 of the typed set of documents.

6.1. Via, this communication, the petitioner's banker has indicated that a lien has been created qua the accounts referred to in the e-mail, in the sum of Rs.69,00,876/- (Rupees Sixty Nine Lakhs Eight Hundred and Seventy Six only); which is the amount demanded towards tax by the respondent No.1.

7. Mr.K.Venkatesh, learned Government Advocate, says that, since, the details with regard to the Tax Deducted at Source (TDS), which is, deposited on behalf of the petitioner, are available with respondent No.2, the information supplied by the petitioner, via, the aforementioned applications/representations will have to be cross verified.

7.1. Insofar as advance tax is concerned, Mr.K.Venkatesh says necessary adjustments will be made.

7.2. Notably, during the course of arguments, learned counsel for the petitioner presented before the Court, a communication dated 27.01.2017, sent by respondent No.1 to respondent No.3, wherein, the petitioner's account is maintained.

7.3. By virtue of this communication, attachment of the petitioner's account maintained with respondent No.3 was ordered. The factum of service of this communication on respondent No.3 or, its contents are not disputed by the learned counsel for the respondents 1, 2, 4 and 5.

8. Furthermore, as noted above, that the prayer in the writ petition is, only, with regard to issuance of a direction to respondent No.1 for disposal of the application dated 14.10.2016, and to consider the adjustment of advance tax and TDS against VAT liability for the month of December 2016 with surplus amount, being credited to its account maintained with the Department. There is no prayer, with regard to lifting of the attachment order passed by respondent No.1.

8.1. This difficulty, I am told, arose, on account of the fact that the communication dated 27.01.2017, was not marked to the petitioner. Therefore, the fact that the said document has been retrieved by the petitioner from respondent No.3, counsel for the petitioner says that the appropriate relief be given, in that behalf, by this Court, having regard to the facts and circumstances of the case.

9. Accordingly, respondent No.1 is directed to pass appropriate orders on the application dated 14.10.2016, as also, the subsequent representations made, in that behalf, to which, I have made a reference above, within a period of two (2) weeks from today.

10. Pending deliberations of the application/representations made by the petitioner, by respondent No.1, the operation of the communication dated 27.01.2017 issued by respondent No.1 to the petitioner's banker, i.e., respondent No.3, shall remain suspended.

11. The captioned writ petition is closed, with the aforesaid direction. Resultantly, pending application shall also stand closed. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Principal Secretary,
Commercial Taxes Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

2. The Commissioner of Commercial Taxes,
Chepauk, Chennai-600 005.

3. The Assistant Commissioner (CT),
   Amaindakarai Assessment Circle,
   No.50, 1st Avenue, Anna Nagar East,
   Chennai-600 102.

4. The Assistant Commissioner (CT),
   Royapettah Assessment Circle,
   Chennai.

5. The Operations Manager,
   M/s.Axis Bank,
   F33, II Avenue, Anna Nagar East,
   Chennai-102.

+1cc to Mr.Lakshmikumaran, Advocate sr.6328

+1cc to Special Government Pleader sr.6365

W.P.No.2370 of 2017

scd(co)
ss(6/2/2017)