

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2017

Coram

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

Writ Petition No.34923 of 2004

and

W.P.M.P.Nos.42134 to 42136 of 2004

M/s.Acilube India

Rep. by its Sole Proprietor

Mr.T.M.Jagadeesh

...Petitioner

Vs.

1. Deputy Commissioner North(C.T.)
3rd Floor
Greams Road,
Chennai-600 006.

2. The Assistant Commissioner (C.T.)
Enforcement (North)
1st Floor
Greams Road
Chennai - 600 006.

3. Commercial Tax Officer
Esplanade II
Kuralagam
Chennai - 600 108

4. M/s.Goodlass Nerolac Paints Ltd.,

5. M/s.Poonam Oil Industries

...
Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents 1, 2 and 3 to recover the sum of Rs.41,25,613/- (Rupees Forty one lakhs twenty five thousand and six hundred and thirteen only) from the 4th respondent namely M/s.Goodlass Nerolac paints limited at No.142, Thiruporur Road, Perungudi, Chennai-600 096, in pursuance of Form B6 Notice dated 06.11.2001 issued under section 26 of the Tamil Nadu General Sales Tax Act as evidenced by several invoices and statement of accounts forwarded to respondents and grant such further relief or reliefs.

For Petitioner : No appearance

For Respondents 1 to 3 : Mr.S.Kanmani Annamalai
Additional Government Pleader

For Respondent 4 : Mr.A.Thiyagarajan
Standing Counsel for
Mr.S.Ramesh Kumar

For Respondent 5 : No appearance

O R D E R

The petitioner has filed this Writ Petition, to direct the respondents 1 to 3 to recover a sum of Rs.41,25,613/- from the 4th respondent, pursuant to a notice of Form B6, dated 06.11.2001, issued under section 26 of the Tamil Nadu General Sales Tax Act, 1959.

2. It is seen that, in response to the notice, the fourth respondent has sent a reply to the third respondent on 20.11.2001, stating that, as per the records, there is no amount payable to the petitioner, and therefore, they will not be in a position to pay any amount to the Commercial Tax Department. After stating so, the fourth respondent informed the third respondent that, copies of the notice received by the petitioner may be forwarded, so as to enable the fourth respondent to look into. It is not known as to what happened thereafter.

3. In the written instructions given by the third respondent to the learned Additional Government Pleader (Taxes) High Court, Madras, dated 06.12.2004, it is stated that, the petitioner is a defaulter, and has not paid the sales tax arrears from 1989-90 to 1993-94. It is the petitioner's submission that money is payable by the fourth respondent to the petitioner. Therefore, the petitioner wants the money recovered from the fourth respondent, and adjusted towards their sales tax arrears. Thus, the petitioner would state that the fourth respondent is a garnishee. However, the fourth respondent would state that no money is payable by them to the petitioner.

4. In the aforesaid circumstances, unless and until, it is established beyond doubt that monies are payable by the fourth respondent to the petitioner, the fourth respondent cannot be made as a garnishee, by solely relying upon the submission of the petitioner. Therefore, at this juncture, no Writ of Mandamus, as sought, can be issued, in the light of the stand taken by the fourth respondent, vide their letter, dated 20.11.2001, stating that, there is no money payable by them to

the petitioner.

5. In the result, this Writ Petition is disposed of with an observation that, if still monies are due and payable by the fourth respondent to the petitioner, it is open to the petitioner to approach the Assessing Officer with adequate records, and if the same is done, the Assessing Officer should issue notice to the fourth respondent and the petitioner, and hear the parties, and proceed with the matter in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

nmm/sd

To

1. Deputy Commissioner North (C.T.)
3rd Floor
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3. Commercial Tax Officer
Esplanade IT
Kuralagam
Chennai - 600 108

+1 CC to The Spl. Govt. Pleader sr 54486
+1 CC to Mr.S. Ramesh Kumar, Sr 54687.

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SS (CO)
sp(31/08/2017)