IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.01.2018

Coram

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

Writ Petition No.31780 of 2017
and
W.M.P.No.34925 of 2017

D&A Corporate Residency
represented by its Director Mr.B.Amarnath, ...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by Joint Secretary to the Govt. of Tamil Nadu,
Revenue Department,
Secretariat, For St. George,
Chennai - 600 009.

2. The Additional Chief Secretary/
Commissioner of Commercial Taxes,
O/o Additional Chief Secretary/
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

3. The Additional Commissioner (Revision Petition),
O/o Additional Chief Secretary/
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

4. The Joint Commissioner (ST),
Sholinga Nallur Assessment Circle,
Perungudy,
Chennai - 600 096.

5. The Assistant Commissioner (CT)
Sholinga Nallur Assessment Circle,
Perungudy, Chennai - 600 096. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondent 5 to revoke/withdraw the Bank Attachment order issued to the HDFC Bank, T.Nagar Branch, Ref. No.373/2017/A3, dated 27.04.2017 and to direct the second respondent to authorize the authority concerned to hear the Petitioner's Revision Petition and pass orders.

For Petitioner : Mr.K.Senguttuvan

For Respondents: Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.K.Senguttuvan, the learned counsel appearing for the petitioner, Mr.K.Venkatesh, the Government Advocate for the respondents, and perused of the materials placed on record, including the counter affidavit, and additional counter affidavit filed by the fifth respondent.

2. The matter arises under the provisions of the Tamil Nadu Tax on Luxuries in Hotels and Lodging Houses Act, 1981 (hereinafter referred to as the 'Luxury Taxes Act').

3. In this Writ Petition, the petitioner has not challenged the demand of tax, but seeks for an appropriate direction to pursue the revisional remedy availed by them, challenging the levy of penalty.

4. It is an admitted fact that, the petitioner did not file any returns in time and did not remit taxes in time. The petitioner would allege that the returns were refused to be accepted, and they were compelled to send the same by a registered post, which was acknowledged by the fifth respondent on 10.08.2017. In the counter affidavit filed by the fifth respondent/Assistant Commissioner (CT), in paragraph No.11, the following tabulated statements has been given :-

(i)

Year	Tax Demand	Penalty Demand	Total
2015-2016	Rs.16,71,063.00	Rs.25,06,595.00	Rs.41,77,658.00
2016-2017	Rs.8,70,346.00	Rs.13,05,519.00	Rs.21,75,865.00
Total	Rs.25,41,490.00	Rs.38,12,114.00	Rs.63,53,523.00

(ii)

D.D. No. & Date	Amount Collected	Date of Receipt
063757/03.05.2017	Rs.42,551.30	05.05.2017
063879/11.05.2017	Rs.21,18,862.98	11.05.2017

D.D. No. & Date	Amount Collected	Date of Receipt
064148/30.05.2017	Rs.1,30,436.54	30.05.2017
065065/27.07.2017	Rs.12,11,546.98	27.07.2017
065805/06.10.2017	Rs.52,354.36	06.10.2017
Total	Rs.35,55,752.16	

5. From the above statements, it is clear that the tax payable by the petitioner for the assessment years 2015-2016 and 2016-2017 is Rs.25,41,490/-, and the petitioner has paid a sum of Rs.35,55,752.16. Therefore, the entire tax component has been fully paid by the petitioner. The fifth respondent would state that the petitioner is a defaulter, because, the penalty demanded, being Rs.38,12,114/-, has not been paid. However, in respect of the said penalty, the petitioner has filed a Revision Petition before the third respondent, and the third respondent has returned the petitioner's Revision Petition on the ground that, he is only an Officer, in the cadre of Joint Commissioner, holding full additional charge of the Additional Commissioner (Revision Petition) and he cannot entertain the Revision Petition. Therefore, the petitioner has sought for a direction upon the second respondent to authorize and empower the third respondent to take on file the Revision Petition.

6. One more important contention advanced by the learned counsel for the petitioner is that, under the provisions of the Tamil Nadu Taxes on Luxuries in Hotels and Lodging Houses Act, 1981, there is no power vested with the fifth respondent to attach the petitioner's bank account and the respondent has invoked Section 45 of the Tamil Nadu Valued Added Tax Act, 2006 (hereinafter referred to as 'the TNVAT') to attach the petitioner's bank account, and therefore, the attachment is without jurisdiction.

7. In my considered view, this issue need not be gone into, in the present case, since the petitioner has paid the entire tax amount and therefore, the attachment of the petitioner's bank account should be immediately lifted and the petitioner should be permitted to pursue his revisional remedy, challenging the levy of penalty.

8. Accordingly, this Writ Petition is disposed of with the following directions:-

i) Since the petitioner has paid the entire tax amount, rather what has been assessed by the fifth respondent, the fifth respondent shall forthwith lift the attachment of the petitioner's bank account, and issue necessary instructions to the petitioner's bankers.

ii) The second respondent is directed to empower the third respondent to take on file the petitioner's Revision Petition, dated 02.08.2017, which was initially filed in the Office of the third respondent, dated 03.08.2007, and such order, empowering the third respondent to deal with the Revision Petition shall be passed by the second respondent within a period of two weeks from the date of receipt of a copy of this order, and on such Authorisation, the Revision Petition shall be heard by an Officer, who is currently holding the full additional charge as Additional Commissioner (RP) and decide the matter on merits and in accordance with law, after affording an opportunity of personal hearing to the authorized representative of the petitioner.

iii) Till a decision is taken and orders are passed in the Revision Petition, no coercive action shall be initiated against the petitioner and monthly returns filed by the petitioner shall be accepted by the fifth respondent and proceeded in accordance with law.

iv) However, there shall be no order, as to costs. Consequently, connected Writ Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS IX)

True Copy

Sub-Assistant Registrar

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To

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+1 CC to Spl. Govt. Pleader sr 1182.

MG(CO)
SP(16/02/2018)