IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2018

C O R A M

THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.22129 of 2018
and
WMP No.25932 of 2018

M/s.Indian Institute of Logistics Pvt. Ltd.,
Rep. by its Managing Director,
No.6, Esplanade Chambers Building,
2nd Floor,
Broadway, Chennai 600 108. ...Petitioner

vs

1.Principal Commissioner of GST & amp; Central Excise,
Chennai North Commissionerate,
26/1 Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

2.Directorate General of Central Excise
Intelligence,
Chennai Zonal Unit,
C-3, C-Wing, II Floor, Rajaji Bhavan,
Besant Nagar, Chennai 600 090.

3.Indian Bank,
Rep. by Branch Manager,
Esplanade Branch,
Chennai. ...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus to direct the respondent 1 and 2 to de-freeze the bank account bearing No.753341477, with the third respondent.
For petitioner : Mr.Sarath Chandran
for M/s.G.R.Associates
For Respondents : Mrs.Aparna Nandakumar for R1
Mr.V.Sundareswaran for R2
Senior Standing Counsel
Mr.Kalyanaraman for R3
for M/s.Aiyar & Dolia

O R D E R

Mr.Kalyanaraman, learned counsel takes notice for the third respondent.

2.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. The petitioner seeks for a mandamus directing the respondents 1 and 2 to de-freeze bank account bearing No. 753341477 operated at the third respondent Bank.

4.The petitioner is an institution providing educational services in logistics and shipping. According to the petitioner, the petitioner institution, will not fall under the purview of educational institutions liable to pay service tax. However, pursuant to issuance of show cause notice, the first respondent passed an order of assessment on 05.03.2018, imposing service tax and penalty on the petitioner. As against the said order, an appeal remedy is available to the petitioner before the Customs Excise and Service Tax Appellate Tribunal, Chennai and such appeal shall have to be filed within the time stipulated under the relevant enactment. In the meantime, the subject matter bank account of the petitioner, being operated at the third respondent bank, has been frozen, on the reason that the petitioner has failed to pay the service tax, in pursuant to a demand resulting out of the said order passed on 05.03.2018.

5.The grievance of the petitioner before this Court is that by freezing the said account, the respondents 1 and 2 have totally paralysed the day to day activities of the petitioner. It is further contented that unless the petitioner is able to operate the said bank account, they will not be in a position even to file the statutory appeal against the order of the first respondent dated 05.03.2018, since such appeal has to be filed along with pre-deposit payment, as required under the relevant provision of law. Therefore, it is contended that the respondents 1 and 2 should be directed to permit the petitioner to operate the bank account by de-freezing the same.

6.Learned counsels appearing for the respondents 1 and 2, on the other hand, submitted that though the order was passed by the first respondent on 05.03.2018, the petitioner has not filed the statutory appeal before the CESTAT till this date. Therefore, the impugned action of the respondents 1 and 2 cannot be found fault with.

7.It is seen that the petitioner suffered an order in original dated 05.03.2018 passed by the first respondent imposing service tax as well as penalty. It is not in dispute that as against the said order, the petitioner has right of appeal before the CESTAT. It is also not in dispute that such appeal can be filed only by making pre-deposit of the statutory liability, as contemplated under the relevant provision of law, while filing such appeal. Since it is stated that freezing of the subject matter bank account has totally paralysed the petitioner's day to day activities, this Court is of the view that the respondents 1 and 2 shall have to permit the petitioner to operate the bank account initially, atleast for the purpose of effecting the pre-deposit, while filing the statutory appeal before the CESTAT. Therefore, I find that to that extent, the petitioner is entitled to operate the said account so that his right of filing of appeal before the CESTAT is not defeated for want of making pre-deposit.

8.Needless to say that the petitioner can file appropriate interim application before the Appellate Tribunal and seek for such interim relief, which includes regarding the operation of the subject matter bank account for the balance amount available in the account. At this juncture, the learned counsel for the third respondent bank submitted that the petitioner may be permitted to operate only in the event when there is no due payable by the petitioner to the third respondent bank on any other account or liability. Needless to say that operation of the bank account, by virtue of this order is available to the petitioner at the hands of the third respondent bank, provided if there is no other legal impediment.

9. Accordingly, this writ petition is disposed of by directing the respondents 1 and 2 to permit the petitioner to operate the bank account, only to the extent of the amount liable to be made as pre-deposit, while preferring the appeal. The third respondent shall also monitor such operation so that the petitioner does not exceed the withdrawal over and above the pre-deposit amount. As already stated
K.RAVICHANDRABAABU,J.
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supra, it is open to the petitioner to seek appropriate interim relief before the CESTAT including the operation of the bank account in respect of the balance amount. No costs. The connected miscellaneous petition is closed.

05.09.2018

Speaking/Non Speaking
Index:Yes/No
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To
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