In the High Court of Judicature at Madras

Dated : 03.8.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.19370 of 2018 & WMP.No.22775 of 2018

M.P.Ganesan, Proprietor of
M/s.S.R.S.Traders ...Petitioner

Vs

1.The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Dowlat Towers, Kilpauk, Chennai-10.

2.The Assistant Commissioner (ST),
Earlier Designated as Assistant
Commissioner (CT), Amaindakarai
Assessment Circle, Dowlat Towers,
Kilpauk, Chennai-10.

3.The Sub Registrar, Anna Nagar,
Chennai-40.

4.The Commissioner of Customs,
Custom House, No.60, Rajaji Salai,
Chennai.

5.The Deputy Director of Income Tax,
Ayakar Bhavan, No.121, Mahatma
Gandhi Road, Nungambakkam,
Chennai-34.

(R4 & R5 are suo motu impleaded as
per order dated 30.7.2018 by TSSJ) ...Respondents

PRAYER: WRIT PETITION under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari to call for the impugned proceedings of the first respondent in Rc.158/2012/A3 dated 31.8.2015 addressed to the third respondent and quash the same as illegal and contrary to law.

For Petitioner : Mr.P.Rajkumar
For Respondents 1 & 2 : Mr.M.Hariharan, AGP
For Respondent-3 : Mr.A.N.Prathap Singh, GA
For Respondent-4 : Mrs.R.Hemalatha
For Respondent-5 : Mr.A.P.Srinivas, SPC

ORDER

Heard all the parties. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is before this Court challenging the impugned communication issued by the first respondent dated 31.8.2015, by which, an encumbrance has been created on the property owned by the petitioner to the extent of Rs.3,01,61,307/-.

3. Learned counsel for the petitioner submits that the built up of the property in question is only 780 sq.ft and its market value is less than Rs.60 lakhs.

4. What is to be noted is that the petitioner earlier approached this Court by filing W.P.Nos.42574 and 42575 of 2016 challenging the assessment orders passed by the first respondent dated 21.11.2016 for the years 2010-11 and 2011-12. The matters were heard and the said writ petitions were allowed on 04.7.2017, the impugned orders therein as well as the ex parte assessment orders dated 21.3.2013 and 29.6.2015 were set aside and the matters were remanded to the first respondent at the stage of show cause notice. Further, the first respondent was directed to make necessary enquiries with the Customs Department - the fourth respondent, the Income Tax Department - the fifth respondent and the concerned banks and on receipt of the information, the first respondent was directed to issue fresh show cause notice to the petitioner and proceed in accordance with law.

5. The operative portions of the said common order dated 04.7.2017 read as follows :

> "5. Therefore, this Court is of the view that, a detailed enquiry is required to be done, and if necessary, the first respondent/Assessing can seek for appropriate orders from the Higher Officers, so that, the Assessing Officer can address the Customs Department, Income Tax Department and the aforementioned three Banks, and then, to proceed with the matter, if this procedure is not followed, it would be a case, where, without specifying that there were verifiable material connecting the petitioner with the transactions, proceedings would deemed to have commenced.

> 6. Thus, as already stated above, the case on hand is being a very peculiar case, this Court is inclined to mould the relief, sought for by the petitioner. Accordingly, both the Writ Petitions are allowed and the impugned orders dated 21.11.2016 are set aside. Consequently, the ex parte assessment orders, dated 21.03.2013 and 24.12.2013 are also set aside and the matters are remanded to the first respondent at the stage of the show cause notices. The first respondent is directed to ask necessary enquiries with the Customs Department, Income Tax Department and the Banks, viz., Kotak Mahindra Bank, Mylapore, Standard Chartered Bank, Rajaji Salai and DCB Bank, Broadway, where, transactions have been effected, and after receipt of the requisite information, the first respondent is directed to issue fresh show cause notice to the petitioner, and thereafter proceed with the matter in accordance with law. Considering the peculiar facts and circumstances, the second respondent is directed to disclose the information secured by them as and when a request is made by the first respondent."

6. According to the petitioner, the matter is still pending before the first respondent and after having waited for nearly a year, the petitioner made a representation to the second respondent dated 19.4.2018 seeking to withdraw the encumbrance created against the property in question, as the petitioner is unable to raise any loans by mortgaging the property for business purposes. The petitioner's consistent stand is that his bank account has been misused, that he does not have wherewithal and that he does not effect such huge transactions as alleged in the audit slips. The Income Tax Department also made verifications and as of now, there is nothing adverse against the petitioner.

7. In order to give effective disposal of the writ petition, this Court suo motu impleaded respondents 4 and 5, who are also represented by their respective learned Standing Counsel. However, the learned Standing Counsel do not have specific instructions.

8. It is not in dispute that the first respondent addressed to the Customs Department and the Income Tax Department. However, he has not received any reply. This is so because the correct officers have not been addressed.

9. Both the learned Standing Counsel appearing for respondents 4 and 5 would submit that the names and designations of the appropriate officers of the respective Departments have been informed to the first respondent through Mr.K.Arumugam, State Tax Officer, Amaindhakarai Assessment Circle, who is present in court today.

10. In any event, the assessment orders have been set aside almost one year back and therefore, the attachment cannot continue.

11. The official, who is present in court, expresses his apprehension that in the event the proceedings culminated in an order levying tax, the Department will not be in a position to recover the same.

12. Though his concern is justified, when the assessment orders have been set aside and when the matters have been remanded for de novo consideration, the attachment cannot continue and more so, in the light of the factual position in the instant case and the nature of direction issued by this Court in the common order dated 04.7.2017 in W.P.Nos.42574 and 42575 of 2016. However, to protect the interest of the Revenue, this Court will pass appropriate orders.

13. In the light of the above, the writ petition is allowed, the impugned order is set aside and the first respondent is directed to lift the order of attachment and necessary intimation shall be sent to the third respondent to delete the encumbrance created within a period of 10 days from the date of receipt of a copy of this order subject to filing of an affidavit, which shall be given by the petitioner on a duly stamped and attested paper before the first respondent, undertaking not to alienate the property in question till the proceedings are concluded. The proper officers of the fourth and the fifth respondent Departments shall extend their cooperation to the first respondent by sharing information and if necessary, hold a discussion with the first respondent and based on the

material, the first respondent is at liberty to proceed further in terms of the directions issued in the common order dated 04.7.2017. Since the matter is pending for more than one year, the Customs Department and the Income Tax Department shall furnish necessary details to the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS )

//True Copy//

Sub Assistant Registrar

RS

To
1.The Commercial Tax Officer, Amaindakarai Assessment Circle, Dowlat Towers, Kilpauk, Chennai-10.

2.The Assistant Commissioner (ST), Earlier Designated as Assistant Commissioner (CT), Amaindakarai Assessment Circle, Dowlat Towers, Kilpauk, Chennai-10.

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4.The Commissioner of Customs,Custom House, No.60, Rajaji Salai, Chennai.

5.The Deputy Director of Income Tax, Ayakar Bhavan, No.121, Mahatma Gandhi Road, Nungambakkam, Chennai-34.

+1 cc to Mr.A.P.SRINIVAS Advocate SR.NO.53683
+1 cc to Mr.P.RAJKUMAR Advocate SR.NO. 53136
+1 cc to Mr.R.HEMALATHA Advocate SR.NO.53653
+1 cc to Special Government Pleader SR.NO.55723
+1 cc to Government Pleader SR.NO.54430

WP.No.19370 of 2018&
WMP.No.22775 of 2018

MR(CO)
ASK(27/08/2018)