IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Monday, the Third day of December Two Thousand Eighteen

PRESENT

THE HON`BLE MR JUSTICE T. S. SIVAGNANAM

AND

THE HON`BLE MR JUSTICE N. SATHISH KUMAR

CMP No.21693 of 2018

in WA.2440/2018

1 DIRECTOR GENERAL OF INCOME TAX [PETITIONERS]
(INV) TAMIL NADU AND PONDICHERRY,
TAMIL NADU AND PONDICHERRY NNO.46,
O.NO.108, MG ROAD, NUNGAMBAKKAM, CHENNAI.

2 PRL DIRECTOR OF INCOME TAX (
INV), MADRAS, INVESTIGATION WING,
NO.46, OLD NO.108, MG RD, NUNGAMBAKKAM, CH-34

3 ADDL DIRECTOR OF INCOME TAX
INVESTIGATION, UNIT-3, NNO.46, OLD NO.108,
MG ROAD, NUNGAMBAKKAM, CH-34

4 DEPUTY DIRECTOR OF INCOME TAX
INVESTIGATION, UNIT-3 (2), NNO.46,
OLD NO.108, MG ROAD, NUNGAMBAKKAM, CH-34

5 DEPUTY DIRECTOR OF INCOME TAX
INVESTIGATION, UNIT-4 (3), NNO.46,
OLD NO.108, MG ROAD, NUNGAMBAKKAM, CH-34

6 ASST COMMISSIONER OF INCOME
TAX, CIRCLE -1, NO.138/3, LMR SHOPPING
ARCADE, III FLOOR, SALEM RD, NAMAKKAL-637 001

Vs

1 T.S.KUMARASWAMY [RESPONDENT]
PROPRIETOR, CHRISTY FRIEDGRAM INDUSTRY, A2
AND A3, SIDCO INDUSTRIAL ESTATE, ANDIPALAYAM,
TIRUCHENGODE, NAMAKKAL DIST.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to permit the 2nd petitioner to revoke the order dt 07.11.2018 which is passed pursuant to the order of the Honble Court dt.02.11.2018 in WA no.2440/2018. (CMP.21693/2018)

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.A.P.SRINIVAS, Standing Counsel for the petitioner and of MR.P.S.RAMAN, SENIOR COUNSEL FOR MR.R.PARTHASARATHY, Advocate for the Respondent the court made the following order:-

(Order of the Court was made by T.S.Sivagnanam, J.)

This petition has been filed by the Director General of Income Tax (Investigation) and six others who are the officials of the Income Tax Department to permit the second petitioner, namely, the Principal Director of Income Tax (Investigation) (hereinafter referred to as "the PDIT (Investigation)), Chennai to revoke the order dated 07.11.2018 passed pursuant to the order passed by the Division Bench on 02.11.2018 in this appeal.

2.Mr.Sathish Parasaran, learned senior counsel appearing for the petitioners submitted that the application filed by the revenue with the prayer to permit them to revoke the order dated 07.11.2018 which is to be dismissed as not maintainable on the ground that any attempt by the Executive Authority to provide itself a protective cover against challenges or criticism to its action by passing the bug to the judiciary in the official decision should be resisted and avoided. In support of such contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Priyadarshini Dental College and Hospital vs. Union of India and others reported in (2011) 4 SCC 623.

3.We have heard Mr.A.P.Srinivas, learned Standing Counsel appearing for the revenue on the above submissions.

4.In our considered view, the petition filed by the revenue is maintainable and we are entitled to consider the same and we are of the firm opinion that it is not an attempt to pass on the bug to this Court and to obtain a protective cover against the departmental action. We support such conclusion with the following reasons.

5.The Division Bench passed an order on 02.11.2018 in this appeal which arose out of a challenge to an order dismissing the miscellaneous petition filed by the appeal to pass a suitable interim orders in the writ petition which was challenging the search and seizure operations as well as the orders of attachment passed against the assessees. The order passed by the Division Bench dated 02.11.2018 is quoted herein below:

"Heard Mr.P.S.Raman, learned Senior Counsel appearing for the appellant and Mr.A.P.Srinivas, learned Standing Counsel for the respondents for some time.

2.It appears that the appellant had moved the writ court seeking interim relief as against the search and seizure/attachment in the premises of the appellant by the respondent-authorities and they are aggrieved by the order of the learned Single Judge in dismissing the application which sought for interim order and therefore, they are before this Court.

3.The learned Senior Counsel appearing for the appellants would submit that there is some illegality in the procedure followed by the authorities while making such search and seizure/attachment and because of the seizure/attachment, the appellant is unable to run the business resulting in stalling of their all business activities and they are not even able to disburse wages to their employees and therefore, it causes much hardship to the appellant. The learned Senior Counsel appearing for the appellant fairly expresses the willingness on the part of the appellant to furnish bank guarantee as an interim measure in the matter. It is further submitted by the learned Senior Counsel that out of the amount the appellant receives from the Civil Supplies Corporation in respect of their business transactions, only 5% would be the profit of the appellant and therefore, they would furnish bank guarantee for the appropriate amount.

4.In the circumstances, we hereby permit the appellant to pursue the matter before the Commissioner concerned forthwith seeking his indulgence to set right the things with regard to the illegality in the procedure alleged to have been adopted by the officer concerned in the matter of search and seizure/attachment. In such event, the Commissioner concerned shall re-consider the issue on merits and in accordance with law. If the appellant is aggrieved even thereafter, it is left open to them to move the learned Single Judge or this Court. List the matter on 9.11.2018."

6.In the order passed by the Division Bench, the Court has recorded the submissions of the learned senior counsel for the appellant and in paragraph 4 of the order, it has permitted the appellant to pursue the matter before the Commissioner concerned forthwith seeking indulgence to set right the things with regard to the illegality in the procedure alleged to have been adopted by the officer concerned in the matter of search and seizure/attachment. On the appellant approaching the Commissioner, the Commissioner was directed to re-consider the issue on merits and in accordance with law leaving it open to the appellant to move the Single Bench or the Division Bench, if they are aggrieved even thereafter. As pointed out by the learned counsel appearing for the revenue, there appears to be two limb to the directions/liberty issued/granted. The first is with regard to the contentions raised by the assessee with regard to the illegality in the matter of search and seizure and consequently with the order of attachment. The assessee accepted the order dated 02.11.2018 and went before the Commissioner who has passed the order dated 07.11.2018. Before the second petitioner, namely, the PDIT (Investigation), the authority has recorded that in the representation of the assessee dated 03.11.2018, certain facts were mentioned and assertions have been made. However, the authority has not dealt with the same on the ground that the matter is sub-judice before this Court. Taking into consideration the submissions made by the assessee that a sum of Rs.417,46,20,742/- are the receivables for the four concerns, one of whom is the assessee, namely, Christy Friedgram Industry and considering the submissions made, the PDIT (Investigation) ordered that the payments due for suppliers of Rs.117,18,38,346/- may be released to the assessee after the Investigating Officer verifies the genuineness of the claim and the balance surplus available from the receivables of Rs.297,56,42,396/- are to be released or deposited in the PD account in the name of the PDIT (Investigation) towards part of the tax liability alone on the admitted undisclosed income of Rs.1350 Crores. Alternatively in terms of the observations made by the Division Bench in its order dated 02.11.2018, it was stated that an irrevocable Bank Guarantee towards tax liability on the admitted amount of Rs.1350 Crores from a Scheduled Commercial Bank may be furnished so that the orders of attachment dated 24.10.2018 can be revoked after receiving the Bank Guarantee.

7.It appears that the Department received certain information from the Tamil Civil Supplies Corporation (TNCS) vide communication dated 20.11.2018 mentioning that the amounts payable to the assessee and other concerns is Rs.57.11 Crores. According to the assessee this letter was very much available with the Department even before this petition was filed. Be that as it may, the Department has issued a notice to the assessee dated 26.11.2018 among other things stating as follows:

"3.From the communication received from Integrated Child Development Services and Tamil Nadu Civil Supplies, Chennai it has been ascertained that the amount of receivables is only Rs.179,75,98,248/-. However, you have reported receivables of Rs.417.46 Crores. Therefore, you have misrepresented and furnished incorrect information regard the quantum of receivables before the undersigned and hence the said order dated 07.11.2018 requires to be revoked. In these circumstances, you are required to show cause why the Integrated Child Development Services, Chennai & Tamil Nadu Civil Supplies, Chennai and also why action as per the provisions of Income Tax Act, 1961 should not be initiated for furnishing false information.

4.Your case stands posted for hearing on 30/11/2018 at 11.00 am at Room No.207, Investigation Building, 46, Mahatma Gandhi Road, Chennai - 34."

8.It is submitted by the learned counsel appearing for the assessee that they received the above referred communication only after the time fixed for hearing. Be that as it may, the assessee have challenged the order dated 07.11.2018 by a separate writ petition which is pending before the learned Single Judge on certain other grounds. Considering these facts, we are of the considered view that the Department is well justified in moving this Court as there are several writ petitions pending apart from the direction issued in the writ appeal by the Division Bench and the main writ petition has also been pending. In the fitness of things, it is appropriate on the part of the Department to seek for leave from this Court to revoke the order dated 07.11.2018. Therefore, we find that it is not a case where the authorities are attempting to pass on the bug to the Court or to obtain protective orders so as to put the assessee in disadvantage position. Therefore, the preliminary objection raised by the assessee stands rejected.

9.Now, we move to consider the relief sought for by the assessee before us. In the opinion of the Department which is based upon the communication received from the Integrated Child Development Services (ICDS) and Tamil Nadu Civil Supplies (TMCS), the receivables is only Rs.179,75,98,248/- and the assessee had reported receivables of Rs.417.46 Crores. The Department is of the prima facie view that the assessee has misrepresented and furnished incorrect information regard the quantum of receivables before the authorities and hence, the order dated 07.11.2018 requires to be revoked. Therefore, the communication dated 26.11.2018 has been issued which is in the nature of show cause notice. The assessee's case is that the communication sent by the TNCS and ICDS to the authority dated 22.11.2018 has not been reckoned which clearly shows that the receivables are more than Rs.350 Crores.

10.Thus, considering the factual matrix the matter definitely requires to be re-considered and the assessee should be given an opportunity to place materials. Further, the TNCS and ICDS are also required to be heard by the authority before taking a decision and an Officer not below the rank of Managing Director should be present before the concerned authority with all records to show as to what are the receivables by the assessee and the other concerns.

11.Considering the above facts, C.M.P.No.21693 of 2018 is allowed and consequently the order dated 07.11.2018 stands revoked and the matter stands remanded to the Principal Director of Income Tax (Investigation), Tamil Nadu and Pondicherry, Investigation Wing, Chennai - 34 for taking a fresh decision after giving effective opportunity to the assessee. It is made clear that the above direction has been issued in the light of the stand taken by the Department that the receivables are lesser than what the assessee had stated before them at the time when the order dated 07.11.2018 was passed. The said authority is directed to conclude the hearing and pass orders within a period of one week from today (03.12.2018).

12.List the main writ appeal on 11.12.2018.

-sd/-
03/12/2018
/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO
1 DIRECTOR GENERAL OF INCOME TAX
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TAMIL NADU AND PONDICHERRY NNO.46,
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7 THE PRINCIPAL DIRECTOR OF INCOME TAX
(INVESTIGATION) TAMIL NADU AND
PONDICHERRY, INVESTIGATION WING, CHENNAI 34.

C.C. to M/S.A.P.SRINIVAS Advocate on payment of necessary charges
C.C. to MR.R.PARTHASARATHY, Advocate Sr.No.14857

Order
in
CMP.21693/2018
IN WA.2440/2018
Date :03/12/2018

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RRI 03/12/2018 (IT)