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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED 18.06.2018  
CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU  
AND  
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A.(MD)No.709 of 2018  
and  
C.M.P(MD)No.4075 of 2018

- 1.The Joint Commissioner of GST & Central Excise,  
Office of the Commissioner of GST & Central Excise,  
No.1, Williams Road,  
Cantonment,  
Trichy - 620 001.
- 2.The Assistant Commissioner of GST & Central Excise,  
GST & Central Excise Division,  
No.15, Gowripuram Extention Area,  
Anna Nagar Main Road,  
Karur - 639 002. .. Appellants/Respondents

Vs.

M/s Cheran Cements Limited (DEFUNCT)  
Rep. by its Authorized Signatory - G.Duraisamy  
Kunnagoundanpatti Post,  
Vaigainallur, Krishnarayapuram Taluk,  
Karur - 639 120,  
Karur District. .. Respondent/Writ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 20.03.2018 made in W.M.P(MD)No.5779 of 2018 in W.P(MD)No.5899 of 2018.

Prayer in WMP(MD). 5779/ 2018 :

To grant interim stay of all further proceedings pursuant to the impugned proceedings of the 1st respondent made in Order-in-Original No.14/2011-ST dated 27/04/2011 pending disposal of the above writ petition.

Prayer in WP(MD). 5899/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari to call for the records on the file of the 1st respondent in his impugned proceedings made in Order-in-Original No.14/2011-ST dated 27/04/2011 quash the same as illegal and contrary to the scheme of the Act.



For Appellants : Mr.B.Vijay Karthikeyan  
For Respondent : Mr.S.Karunakar for  
Mrs.S.Mahalakshmi

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JUDGMENT

[Judgment of the Court was delivered by K.RAVICHANDRABAABU, J.]

This writ appeal is directed against the interim order of stay granted by the writ Court at the time of hearing the writ petition for admission, subject to a condition that the writ petitioner pays a sum of Rs.2,50,000/- within a period of three weeks.

2.The appellants are the respondents before the writ Court. The respondent before us, as the writ petitioner, challenged the Order-in- Original No.14/2011 dated 27.04.2011, wherein and whereby the adjudicating authority confirmed the demand of service tax and interest also by imposing penalty on the assessee/writ petitioner. The said order was put to challenge before the writ Court after seven years, only when the properties belonging to the writ petitioner was put into public auction for realization of the tax due and other amount payable by the writ petitioner.

3.Mr.B.Vijay Karthikeyan, learned Senior Standing Counsel for the appellants vehemently contended that the very entertaining of the writ petition against the Order-in-Original that too made as early as on 27.04.2011, cannot be sustained apart from the fact that the writ Court has also chosen to grant the interim stay of such order at the admission stage itself without even allowing the respondents to put forth their case and bring the actual state of affairs as on the date of filing the writ petition. He further submitted that the properties belonging to the writ petitioner was already under attachment as early as in the year 2011 itself and consequent upon such attachment, e-auction was conducted and third party successful bidder has also emerged on 16.03.2018. He further submitted that a delivery order has been issued in the name of the successful bidder on 20.03.2018. Thus, he submitted that suppressing all those facts, the writ petition has been filed before this Court only to get an interim order, so as to prolong the proceedings one way or other. He further submitted that when the writ petition itself ought not to have been entertained, granting of interim order itself is erroneous. In support of such submission, he relied on a recent decision of the Apex Court reported in (2018)3 SCC 85 [State Bank of Travancore vs. Mathew K.C].

4.Per contra, the learned counsel appearing for the respondent/writ petitioner submitted that as the company itself was closed as early as in the year 2008 much earlier to the order of the adjudicating authority, the writ petitioner was not aware of the said order or any subsequent developments and therefore, they did not challenge the Order-in-Original immediately. He further



submitted that even otherwise, before bringing the property for auction, the appellants/respondents should have issued notice to the writ petitioner.

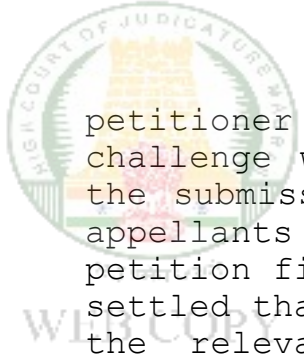
5. We heard both sides and perused the materials placed before this Court.

6. At the time of entertaining the writ appeal, we have directed the parties to maintain status quo as on 27.04.2018 and the said order of status quo is still in force.

7. The present writ appeal is arising out of an interim order of stay granted by the writ Court, while entertaining the writ petition challenging the order of the adjudicating authority. The matter pertains to the service tax dispute. Undoubtedly, as against the Order-in-Original, a statutory appeal remedy is available to the aggrieved party before the appellate authority, namely, Commissioner of Customs and Central Excise (Appeals) and such appeal shall also to be filed within the prescribed period of limitation. It is the case of the writ petitioner that they are not aware of the order passed by the adjudicating authority. However, they have chosen to keep quiet for seven years and suddenly approached this Court now and filed the writ petition, when the respondents brought the properties of the writ petitioner for public auction.

8. Though it is contended by the learned counsel for the writ petitioner that the petitioner was not aware of the order impugned in the writ petition, we are not inclined to accept such contention. The averment made at paragraph 9 of the affidavit would only indicate that such order was only not brought to the knowledge of the higher management and not that the said order was not at all within the knowledge of the writ petitioner. In fact, in the very same paragraph, it is stated that the impugned order itself could not be traced and with great difficulty, they have managed to find out a copy of the same, based on which, the present writ petition was filed. When such being the contention of the writ petitioner, we do not find any reason or justification on the part of the writ petitioner in challenging the impugned proceedings after such inordinate delay of seven years.

9. Perusal of the affidavit filed in support of the writ petition would also reveal that the petitioner has not explained as to why they approach this Court after a period of seven years without even filing a statutory appeal within the prescribed period of limitation, except to state that the writ petitioner was constrained to close down their operations due to severe financial crunch and further labour unrest and management rejigs have contributed to valuable time having been lost much to the writ petitioner's own prejudice. Needless to say that when the writ petitioner had suffered an order at the hands of the adjudicating authority as early as on 27.04.2011, unless and until such order is put to challenge before the appropriate forum immediately, the writ



petitioner cannot be heard to say that due to financial crunch, the challenge was not made immediately. Therefore, we find force in the submission made by the learned senior standing counsel for the appellants with regard to the very maintainability of the writ petition firstly on the ground of delay. Even otherwise, it is well settled that when an effective alternative remedy is available under the relevant statute, filing of the writ petition cannot be entertained, more particularly, in fiscal matters. At this juncture, it is useful to refer to the following decisions:-

1) M/s.Nivaram Pharma Private Limited rep.by its Director Sardarmal M.Chordia, Madras -vs- The Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, Madras and others reported in (2005) 2 MLJ 246(DB)

2) United Bank of India -vs- Satyawati Tondon and others reported in (2010) 8 SCC 110

3) Raj Kumar Shivhare -vs- Assistant Director, directorate of Enforcement and Another reported in (2010) 4 SCC 772.

4) Metal Weld Electrodes -vs- CESTAT, Chennai reported in 2014 (299) ELT 3 DB.

10. When such being the position, the writ Court entertained the writ petition and granted the interim stay of the impugned proceedings also without assigning any reason for granting such interim order. Even though the same has been granted at the admission stage, a prima facie of view should have been stated for granting such interim order, more particularly, when the very impugned proceedings was passed as early as on 24.07.2011 and as against such proceedings, a statutory appellate remedy was very much available to the writ petitioner before the concerned appellate authority. It is relevant to refer the recent decision of the Apex Court relied on by the learned senior standing counsel for the appellants, reported in (2018)3 SCC 85, (cited supra), at this juncture, wherein the Apex Court at paragraph Nos.15 and 16 as observed as follows:-

"16. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payer's expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the

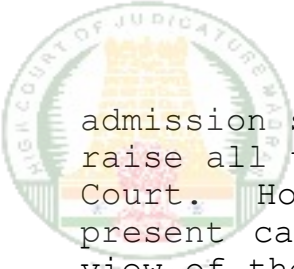


public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in *Satyawati Tandon* [United Bank of India v. Satyawati Tondon, (2010)8 SCC 110 : (2010)3 SCC (Civ) 260] , has also not been kept in mind before passing the impugned interim order:-

"46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad*, *Whirlpool Corpn. v. Registrar of Trade Marks* and *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

17. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference."

11. Considering the above stated law laid down by the Apex Court and considering the fact that the writ petitioner has chosen to challenge the Order-in-Original after a period of seven years and considering the fact that the same was entertained by granting an interim order without assigning any reason, we are fully satisfied that the appellants have made out a case to interfere with the order passed by the writ Court, even though the same was made at the



admission stage. Normally, we would have directed the appellants to raise all these points and file vacate stay petition before the writ Court. However, under the peculiar facts and circumstances of the present case, we are not inclined to do so, more particularly, in view of the decision of the Apex Court reported in (2018)3 SCC 85 as referred to supra.

12. Moreover, in this case, as it is stated that the properties of the writ petitioner were already under attachment from the year 2011 onwards and such properties were brought for public auction as early as on 28.02.2018 and the same was purchased by a successful bidder on 16.03.2018 and in whose favour, a delivery order has also been issued on 20.03.2018, we do not find any reason or justification to sustain the interim order of stay granted by the writ Court.

13. Accordingly, the Writ Appeal is allowed and the interim order of stay granted by the writ Court is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Commissioner of GST & Central Excise,  
Office of the Commissioner of GST & Central Excise,  
No.1, Williams Road,  
Cantonment,  
Trichy - 620 001.

2. The Assistant Commissioner of GST & Central Excise,  
GST & Central Excise Division,  
No.15, Gowripuram Extension Area,  
Anna Nagar Main Road,  
Karur - 639 002.

+1cc to M/S.B.Vijay Karthikeyan, Advocate SR.No. 68668  
+1cc to M/S.S.Mahalakshmi, Advocate SR.No. 68783

W.A. (MD) No. 709 of 2018  
and  
C.M.P (MD) No. 4075 of 2018  
18.06.2018