THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION NO.7811 OF 2018

ORDER: (per SK,J)

Challenge in this writ petition is to the proceedings dated 20.02.2018 issued by the Assistant Commissioner of Central Tax, GST Division, Kurnool, Andhra Pradesh, the third respondent herein, whereby the Andhra Pradesh Beverages Corporation Limited, the fourth respondent herein, was called upon to pay such amounts which were due to be paid or to be paid in future to the petitioner company into the credit of the Central Government as per Section 11(2)(ii) of the Central Excise Act, 1944 (for short, 'the Act of 1944') and Section 87(b)(ii) of the Finance Act, 1994 (for short, 'the Act of 1994') read with Section 11E of the Act of 1944 and Section 88E of the Act of 1994. This action was taken by the third respondent against the petitioner company as it was treated as a defaulter under Section 11(2)(iii) of the Act of 1944 and Section 87(b)(iii) of the Act of 1994 in relation to the undisputed tax arrears to the tune of Rs.49,11,52,988/-. These dues were attributable to M/s.Panyam Cements and Mineral Industries Limited and not to the petitioner company itself.

It appears that the third respondent issued garnishee notices dated 11.10.2017 to the customers of the petitioner company in relation to the aforestated tax arrears. However, the petitioner company addressed letter dated 27.11.2017 requesting the third respondent to revoke the said garnishee notices undertaking that it would submit the details of related party financial transactions with its group company M/s.Panyam Cements and Mineral Industries Limited, the defaulting assessee. Accepting this request, the third respondent withdrew the garnishee notices under letters dated 27.11.2017. However, as the petitioner company failed to furnish the details as undertaken by it, the third respondent addressed letter dated 23.01.2018 to its Managing Director requesting it to furnish the details within three days, failing which, he threatened to revoke the withdrawal letters dated 27.11.2017 issued to its customers. As the petitioner company failed to abide by the directive in this letter, the third respondent addressed letter dated 01.02.2018 to the Managing Director of the petitioner company, wherein he adverted to the fact that M/s.Panyam Cements and Mineral Industries Limited owed an amount of Rs.48,74,96,554/- to the Government of India towards arrears of central excise duty and service tax along with interest and penalty. He further stated that M/s.Panyam Cements and Mineral Industries Limited had invested Rs.50.00 crore in the equity shares of the petitioner company and had also given corporate guarantees to various banks amounting to Rs.133 crores for financial assistance availed by the petitioner company. Further, M/s.Panyam Cements and Mineral Industries Limited was stated to have given advances/inter-corporate deposits to associate companies to the tune of Rs.89.80 crores as on 31.03.2017, though the names of the entities were not mentioned there. As the petitioner company had failed to furnish the details as promised by it earlier, the third respondent informed it that as it had received the above-mentioned sums of money from M/s.Panyam Cements and Mineral Industries Limited, which owed Rs.48,74,96,554/- to the Government of India, it was liable to pay the said amount to the Government. He accordingly requested it to pay the said amount to the Government within fifteen days. Failure to comply, led to the issuance of the impugned notice dated 20.02.2018 to the fourth respondent.

Sri S.Ravi, learned senior counsel appearing for Sri S.Appadhara Reddy, learned counsel for the petitioner company, would admit that there was a lapse on the part of his client in furnishing the details as requested by the third respondent. He would however point out that the third respondent himself was not aware as to what was the amount available with the petitioner company whereby it could be asked to pay the said amount towards the outstanding dues of Rs.48,74,96,554/- attributable to M/s.Panyam Cements and Mineral Industries Limited. He would point out that Section 11(2)(iii) of the Act of 1944 states to the effect that a person who receives a garnishee notice under Section 11(2)(ii) thereof and fails to make payment pursuant thereto shall be deemed to be a person from whom duty and any other sums of any kind payable to the Central Government under any of the provisions of the said Act or the Rules framed thereunder have become due, in respect of the amount specified in the notice and all consequences under the said Act shall follow. Therefore, a garnishee, who fails to pay the amount as directed in the notice, would become a person in default in his own capacity and would be liable to be acted against under the Act of 1944.

Considering a like situation arising under Section 226 of the Income-tax Act, 1961 (for short, 'the Act of 1961'), a learned single Judge of the Kerala High Court in TISSAN JOSEPH v. COMMISSIONER OF INCOME TAX[1] held to the effect that when there is a dispute with regard to the liability that can be pinned upon the garnishee, the authorities should afford an opportunity to such garnishee to establish his case. Reference may also be made to Order 21 Rule 46-A CPC, which deals with a notice being given to a garnishee and states to the effect under sub-rule

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[1] (1999) 151 CTR (Ker) 450 = [1999] 235 ITR 619 (Ker)

(1) thereof that a notice should be given to the garnishee who is liable to pay such debt calling upon him either to pay into Court the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution or to appear and show-cause why he should not do so. Order 21 Rule 46-B CPC provides that where a garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show-cause in answer to the notice, the Court, may order the garnishee to comply with the terms of such notice, and on such order, execution may be issued as though such order were a decree against him.

Though the aforestated scheme as set out under Order 21 Rule 46 CPC or Section 226 of the Act of 1961 does not find mention in such clear terms in Section 11(2)(ii) of the Act of 1944, we are of the opinion that when the third respondent was himself not sure as to what would be the amount available with the petitioner company that could be demanded for settlement of the tax arrears of M/s.Panyam Cements and Mineral Industries Limited, it is entitled to an opportunity to come forward and furnish the relevant details. No doubt, sufficient opportunity was given by the third respondent to the petitioner company to do so, but it failed to avail the same. Given the peculiar facts and circumstances of the case, as the third respondent is unaware of the amount that is available with the petitioner company that could be claimed by M/s.Panyam Cements and Mineral Industries Limited, we are of the opinion that one last opportunity may be afforded to it to come clean.

The writ petition is disposed of permitting the petitioner company to produce the details of related party financial transactions with

M/s.Panyam Cements and Mineral Industries Limited before the Assistant Commissioner of Central Tax, GST Division, Kurnool, within one week from today. The respondent authorities shall not take further coercive measures till expiry of this time. In the event the petitioner company fails to make use of this last opportunity, it is open to the respondent authorities to proceed further in the matter in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR,J

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D.V.S.S.SOMAYAJULU,J

Date:12.03.2018

GJ