IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.5479 of 2019
and
WMP.No.6236 of 2019

Tvl. Sree Ramakrishna Electricals,
Represented by its Proprietor V. Ravichandran,
No-14, Chittukoil Street, Kallanguthu,
Salem- 636 001. ... Petitioner

Vs

1. The Assistant Commissioner (CT) (FAC),
Salem Town (South), Salem.

2. The Branch Manager,
City Union Bank,
No.96, 98, 100, Arunachala Achari Street,
Salem -636 001.

3. The Appellate Deputy Commissioner (CT)
Commercial Taxes Building,
Salem. ... Respondents

Prayers: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records on the files of the 1st respondent in Form-U-being notice for recovery of money due issued on the 2nd respondent's bank in Assessment No.33182680830/2015-16 dated 05.02.2019 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice and issue such further writ, order or direction.

For Petitioner : Mr. R. Senniappan

For Respondents : Ms.G.Dhanamadhiri,
Government Advocate (Taxes)

O R D E R

The present Writ Petition has been filed challenging the impugned attachment notice in Form-U dated 05.02.2019 issued for recovery of money due, pursuant to an assessment made in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short the 'Act') for the period 2015-16.

2. Admittedly, the order of assessment dated 14.07.2017 has been challenged by the petitioner by way of statutory appeal in terms of sections 51 and 52 of the Act. The appeal is pending disposal. It is, in this aforesaid circumstance, that the impugned attachment order has been passed.

3. Mr. R. Senniappan, learned counsel for the petitioner points out that the applicable statutory provision requires the pre-deposit of 25 per cent of the disputed tax for maintaining the appeal. 25 per cent, in this case amounts to a sum of Rs.1,70,737/- as against which, the petitioner has remitted a sum of Rs.6,08,687/-. The entirety of the disputed tax amounts to a sum of Rs.6,82,947/-. In the aforesaid circumstances, he prays that the recovery of the balance be stayed and the appeal itself be directed to be disposed within a fixed time frame.

4. Ms. Dhanamadhri, learned Government Advocate (Taxes) takes notice for the respondents and fairly states that she has obtained instructions from the Assessing Authority in the present case, confirming the position that the petitioner has indeed paid a sum of Rs.6,08,687/- as set out in Form 10 filed by the petitioner along with the appeal.

5. In the aforesaid circumstances, I see merit in the submissions of the petitioner. As against the disputed taxes of a sum of Rs.6,82,947/-, a sum of Rs.6,08,687/- has admitted been remitted by the petitioner. Thus, I see no reason to sustain the impugned order as approximately 90 per cent of the disputed demand has been paid by the petitioner. In the aforesaid circumstances, the coercive recovery proceedings initiated do not appear to be justified.

6. Though the petitioner has rightly filed a statutory appeal in terms of the provisions of Section 51 (4) of the Act and the proviso thereunder provides for the petitioner to approach the first Appellate Authority for the grant of stay, the petitioner, in the peculiar circumstances of the present case, not be relegated to such statutory remedy.

7. The impugned attachment shall stand lifted and no further coercive proceedings shall be initiated, in respect of the order of assessment dated 14.07.2017 till the disposal of the appeal by the First appellate Authority/the Appellate Deputy Commissioner (CT), arrayed as 3rd respondent in this Writ Petition. The said authority is directed to dispose of the appeal, within a period of eight (8) weeks from the date of

order. This Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner (CT) (FAC),
Salem Town (South), Salem.

2. The Branch Manager,
City Union Bank,
No.96, 98, 100, Arunachala Achari Street,
Salem -636 001.

3. The Appellate Deputy Commissioner (CT)
Commercial Taxes Building, Salem.

+1 cc to Mr.R.Senniappan, Advocate Sr.No.19039
+1 cc to The Special Government Pleader, Sr.No.18989

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CSL/07.03.2019