IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.1512 of 2019
&
C.M.P.Nos.10262, 10263 of 2019

V.Manikandaraju ...Appellant

-vs-

1. Additional Commissioner,
O/o. the Commissioner of Central Excise,
Customs & Service Tax, No.6/7, A.T.D.Street,
Race Course Road,
Coimbatore - 641 018.

2. The Assistant Commissioner of
Central Goods & Service Tax,
Pollachi Division, Jothi Nagar 'D' Colony,
Pollachi - 642 001.

3. M/s.Sri Kannan Departmental Store Pvt. Ltd.,
20 Police Station Road,
Pollachi - 642 001.

...Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order of this Court in W.P.No.8288 of 2019 dated 04.04.2019.

Prayer in W.P.No.8288 of 2019:

Writ Petition praying to issue a Writ of Certiorarified Mandamus or any other appropriate writ order or direction under article 226 of the Constitution of India, 1950 and call for the records on the files of the 1st Respondent herein Order - in-Original in OIO SL. No.03/ 2017- ADC dated 05.01.2017 and quash the same and consequently direct the 2nd respondent to lift the attachment made in c. No.V/ ST/ 15/ 16/ 2015- S.T. Adjn dated 16.11.2017.

For appellant : Mr.A.N.R.Jayaprathap
For respondents: Mr.A.P.Srinivas
Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by T.S.Sivagnanam, J.)

This appeal has been filed by the appellant challenging the order and direction in W.P.No.8288 of 2019 dated 04.04.2019.

2. We have heard Mr.A.N.R.Jayaprathap, learned counsel for the appellant and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents. With the consent on either side, the writ appeal is taken up for disposal.

3. This appeal is directed against the Order-in-Original dated 05.01.2017. The appellant is not aggrieved by the impugned order in its entirety to the only extent that the learned Single Bench did not pass any orders for lifting all the attachments of the rents paid by the third respondent to the appellant. Further the learned counsel for the appellant pointed out that the appellant has already paid 65% of the tax liability which has been recovered by attaching rent and appropriate directions may be issued to the Appellate Authority not to insist upon pre-deposit while entertaining the appeal.

4. The learned Senior Standing Counsel for the respondent vehemently opposed the prayer sought for by the appellant and contended that the appellant can very well move for such a relief before the First Appellate Authority. After hearing the learned counsel on either side and considering the materials placed on record, we are of the view that since, the learned Single Bench was convinced with the case of the appellant and granted liberty to file an appeal, we are of the view, that adequate protection should be granted to the appellant pending disposal of the appeal by the Commissioner subject to the interest of Revenue being safeguarded.

5. Admittedly, as against the total demand of Rs.38,14,620/- as demanded in the Order-in-Original dated 05.01.2017, the respondent/department has so far recovered a sum of Rs.24,35,280/- by way of attachment of rent paid to the appellant by his tenant/third respondent. This amount if reckoned will be more than 67% of the total demand. Therefore, we are of the view, that the interest of Revenue has been sufficiently safeguarded and this amount which has been recovered shall be retained and abide by the order to be passed by the Commissioner in the Appeal to be filed by the appellant, as per the direction of the learned Single Bench. In so far as the pre-deposit is concerned, since, more than 67% of the demand has already been recovered, the Commissioner, while entertaining the appeal shall not insist upon any statutory pre-deposit but

reckon the amount of Rs.24,35,280/- recovered as the deposit made by the appellant as condition precedent for entertaining the appeal.

6. In the light of the above, the writ appeal is partly allowed and there shall be a direction to the respondent Nos.1 & 2 to lift the order of attachment dated 16.11.2017 attaching the rental income of the appellant paid by the third respondent within a period of one week from the date of receipt of copy of this judgment. The appellant shall present the appeal within a period of two weeks from the date of receipt of copy of this judgment and the Commissioner shall entertain the appeal without insisting upon any pre-deposit for the above reasons set out by us.

7. In the result, the writ appeal is partly allowed. No costs. Consequently, the connected civil miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. Additional Commissioner,
O/o. the Commissioner of Central Excise,
Customs & Service Tax, No.6/7, A.T.D.Street,
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Coimbatore - 641 018.

2. The Assistant Commissioner of
Central Goods & Service Tax,
Pollachi Division, Jothi Nagar 'D' Colony,
Pollachi - 642 001.

+1cc to Mr.A.P.Srinivas, Advocate Sr.40580
+1cc to M/S.Mahalakshmi, Advocate Sr.40891

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srg 03/07/2019