IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Appeal No.4014 of 2019 and C.M.P.No.25150 of 2019

M/s.Supreme Dyechem Pvt.Ltd.,
represented by its Director
Mr.Mohan Prasath J
T-40, Rudraksh Complex-II
Opp.Annapurna Restaurant
Nr.Jashodanagar Cross Roads
Vatva 382 445, Ahmedabad, Gujarat. ... Appellant

-Vs-

1. The Assistant Commissioner (CT) (FAC)
Cuddalore Town Assessment Circle
Cuddalore.

2. The Branch Manager, ICICI Bank Limited
Poonam Plaza, Ground Floor
Rambaug Plaza, Mani Nagar
Ahmedabad - 380 008, Gujarat. ... Respondents

For Appellant : Mr.Hari Radhakrishnan

For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader

Prayer : Appeal under Clause 15 of the Letters Patent against the order of this Court dated 08.08.2019 passed in W.P.No.23239 of 2019.

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records pertaining for the impugned notice dated 23/07/2019 issued by the first respondent in RC A3/102/2019 dated 22/07/2019 and quash the same.

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

Learned counsel for the Assessee submitted that since the defaulter Assessee M/s.Supreme Chemical Industries represented by its Proprietor Mr.G.Jayabal has challenged the impugned order of penalty for Assessment Year 2014-15 amounting to Rs.11,05,037/- by way of Writ Petition No.27119 of 2019, which has been allowed by the learned Single Judge on 13.09.2019 and the impugned penalty order has been set aside, the present Writ Appeal against the order of the learned Single Judge dated 08.08.2019 is rendered infructuous.

2. The learned Single Judge, in the order dated 13.09.2019 in W.P.No.27119 of 2019 has held as under:-

> " 7. In respect of the assessment year 2014-2015, the Assessing Officer proposed the tax, interest and penalty. Insofar as levy of tax and interest is concerned, it is seen that the petitioner has discharged his liability. Therefore, the only dispute is with regard to the imposition of penalty. As rightly pointed out by the learned counsel for the petitioner that, such imposition of penalty would arise only when there is a wilful non-disclosure of turnover and to that effect a specific finding should be rendered by the Assessing Officer in the impugned order. In this case, I find that no such findings rendered, except to state that the penalty is levied for wilful non-disclosure of turnover. It is true that the petitioner has not responded to the notice dated 06.01.2017. However, considering the fact that the petitioner has already discharged the tax and interest liability, this Court is of the view that one more opportunity shall be granted to the petitioner, more particularly, when he has succeeded before the Appellate Authority in getting the matter remitted back to the Assessing Officer to reconsider the issue afresh.
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> 8. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to

reconsider the issue on the penalty once again, after giving an opportunity of personal hearing to the petitioner. The petitioner shall file their objections within a period of two weeks from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall fix the date of personal hearing and on completion of the same, pass fresh orders on merits and in accordance with law, within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed."

3. The impugned attachment order is against the present petitioner/appellant M/s.Supreme Dyechem Pvt ltd., represented by its Director Mr.Mohan Prasath J, who is related to Mr.G.Jayabal, Sole Proprietor, M/s.Supreme Chemical Industries, who are father and son. Therefore, the learned Single Judge has disposed of the present writ petition in W.P.No.23293 of 2019 filed by the petitioner / appellant company with certain directions to deposit certain amounts under the garnishee proceedings initiated against the present appellant company. The garnishee proceedings now cannot sustain and the penalty in question itself has been set aside and matter stands remanded to the Assessing Authority.

3. In view of the same, the present writ appeal is disposed of as rendered infructuous. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner (CT) (FAC)
Cuddalore Town Assessment Circle, Cuddalore.

2.The Branch Manager, ICICI Bank Limited
Poonam Plaza, Ground Floor
Rambaug Plaza, Mani Nagar
Ahmedabad - 380 008, Gujarat.

+1cc to the Special Government Pleader Sr.105453

W.A.No.4014 of 2019

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srg 11/02/2020