IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P. No.19775 of 2020
and WMP.Nos.24437 & 24439 of 2020

M/s.Acme Fitness Pvt Ltd
R.S.No.108/1- A / 1 100 Feet Road
ECR Sundaraja Nagar Mudaliarpet
Puducherry-605004 ...Petitioner

Vs

1 The Commercial Tax officer GD-II
Commercial Tax Department
100 Feet Road Ellapillaichavady Puducherry-605505

2 The Branch Manager
HDFC Bank Limited MD Tower
No.56 Jawaharlal Nehru Road 100 Feet Road
Vadapalani Chennai 600 026
...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari to call for the records of the first Respondent in the impugned Attachment Notice No. 34800004388 / CTO - GDII / 2020 - 21 /48 dated 27.11.2020 for recovery of Rs.36 26 792/- quash the same as it has been issued in violation of the provisions of section 49 of the Puducherry Value Added Tax 2007.

For Petitioner : Mr.V.S.Manoj
For Mr.K.Vaitheeswaran

For Respondents: Mr.J.Kumaran (for R1)
Addl. Government Advocate
(Pudhucherry)

O R D E R

Mr.J.Kumaran, learned Additional Government Pleader accepts notice for R1 and is armed with instructions to proceed with the matter.

2.The challenge in this writ petition is to attachment notice dated 27.11.2020 issued to the Bank Manager, HDFC Bank

Limited, Chennai in connection with coercive recovery of a sum of Rs.36,26,792/-, arising out of disputed order of assessment passed under the provisions of the Puducherry Value Added Tax Act, 2007 for the periods 2015-16 and 2016-17.

3.Learned counsel for the petitioner submits that the coercive recovery is premature insofar as the common appellate order is itself dated 09.11.2020 and has been served upon the petitioner only on 21.11.2020. He further points out that the period available for filing of second appeal before the Sales Tax Appellate Tribunal is 60 days that expires on 20.01.2021. Thus, according to him, the respondent ought not to have issued the impugned recovery notice to the bank even without putting the petitioner to notice or issuing a copy of the attachment notice in advance.

4.Mr.Kumaran learned revenue counsel, on instructions, would submit that the provisions of Section 49 of the Act do not grant any time to the petitioner to make the payment of the disputed tax and as such the entire demand, as confirmed by the appellate authority becomes payable immediately upon service of the order.

5.The provisions of Section 49 read as follows:

> 49. Appeal to the Appellate Tribunal. - (1) Any person objecting to an order passed by the Appellate Assistnat Commissioner under sub-section (3) of section 47 or an order passed under the proviso to sub-section (4) of section 77 may, within a period of sixty days from the date on which the order was served on him in the manner prescribed, appeal against such order to the Appellate Tribunal:
>
> …….
>
> Provided further that no appeal filed by any person objecting to an order passed under sub-section (3) of section 47 shall be entertained unless it is accompanied by satisfactory proof of the payment of tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be, and twenty-five per cent of difference of the tax as ordered by the Appellate Assistant Commissioner and the tax admitted by the appellant:
>
> Provided also that the Appellate Tribunal may, if it thinks fit, for reasons to be recorded in

writing and subject to furnishing of such security as the Appellate Tribunal may deem fit, admit an appeal against the order of the Appellate Assistant Commissioner with part payment or without any payment of tax as ordered by the Appellate Assistant Commissioner required under this sub-section with a view to mitigate undue hardship which is likely to be caused to the person if the payment of such amount is insisted on.

……

(5) Notwithstnading that an appeal has been preferred under sub-section (1) the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the Appellate Tribunal may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction, in such form and in such manner as may be prescribed:

Provided further that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1), the Appellate Tribunal shall dispose of the appeal within a period of ninety days from the date of such order.'

6.Thus, a party aggrieved by an order of the first appellate authority is granted a period of 60 days with an extension of another 60 days for which condonation may be sought, for filing of a second appeal before the Sales Tax Appellate Tribunal an appeal challenging the order of the first appellate authority. The appeal is to be entertained only if it is accompanied by 25% of the disputed tax which may be waived either fully or partly upon application by the appellate tribunal if ordered so, for reasons to be recorded in writing and subject to furnishing of appropriate security.

7.The submission of the revenue to the effect that the entire tax becomes payable immediately upon dismissed of an appeal by the first appellate authority thus, appears to be misconceived. In my view, an assessee aggrieved by an appellate order should have the full benefit of the period granted for filing of appeal and it is only thereafter that proceedings may be initiated recovery of the disputed demand.

8.I find support in this regard from a decision of a learned Single Judge of this Court in Coimbatore Pioneer Mills Ltd. Vs. CTO [(2008) 15 VST 547] wherein a direction has been issued to the Department not to initiate steps for recovery till such time the time for filing of second appeal has expired.

9.In light of the above, a direction is issued to the 2nd respondent to lift the impugned attachment forthwith.

10. This writ petition is allowed. Connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Ska/sl

To

The Commercial Tax officer GD-II
Commercial Tax Department
100 Feet Road Ellapillaichavady
Puducherry-605505.

+1 CC to Government Pleader(Puducherry) sr 43172.

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GMR(CO)
SP(02/02/2021)