In the High Court of Judicature at Madras

Dated : 24.2.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Ms.Justice R.N.MANJULA

Writ Appeal No.479 of 2021 and CMP.No.1895 of 2021
WP.NO.19775 OF 2021

The Commercial Tax Officer
GD-II, Commercial Taxes
Department, Pudhucherry-5.
...Appellant/1st Respondent

Vs

1.M/s.Acme Fitness Pvt. Ltd.,
Puducherry-4.

2.The Branch Manager, HDFC
Bank Ltd., Vadapalani,
Chennai-26. ...Respondents/ Petitioners

APPEAL under Clause 15 of the Letters Patent against the order dated 23.12.2020 made in W.P.No.19775 of 2020.

Prayer in W.P.No.19775 of 2020:
Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a 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 Appellant : Ms.V.Usha, AGP (P)

Judgment was delivered by T.S.SIVAGNANAM,J

We have elaborately heard Ms.V.Usha, learned Additional Government Pleader (Puducherry) appearing for the appellant.

2. This appeal filed by the Commercial Tax Department, Puducherry is directed against the order dated 23.12.2020 made in W.P.No.19775 of 2020.

3. In the said writ petition, the first respondent herein challenged the attachment notice dated 27.11.2020 for recovery of the sales tax payable to the appellant herein.

4. The first respondent - dealer contended that the coercive action initiated by the appellant was premature, as the order passed by the First Appellate Authority dated 09.11.2020 was served upon the first respondent only on 21.11.2020, that the time limit for filing the appeal before the Sales Tax Appellate Tribunal was 60 days i.e 20.1.2021 and that within that period, the appellant ought not to have issued the recovery notice.

5. The appellant, before the learned Single Judge as well as before us, represented by the learned Additional Government Pleader (Puducherry), would submit that the provisions of Section 49 of the Puducherry Value Added Tax Act, 2007 (for short, the PVAT Act) did not provide for grant of time to the first respondent - dealer to make payment of the disputed tax and as such, the entire demand, as confirmed by the First Appellate Authority, became payable immediately upon service of the order.

6. The learned Single Judge considered the matter and rejected the submission of the appellant - Department to the effect that the entire tax demanded became payable immediately upon dismissal of the appeal by the First Appellate Authority.

7. In our considered view, the observation made by the learned Single Judge is perfectly right and justified. The appeal remedy granted under Section 49 of the Act is a statutory remedy and a valuable right to the first respondent - dealer. The said right cannot be frustrated by initiating recovery proceedings even before the appeal time is over. Probably, the appellant may be right in respect of the period beyond the first 60 days, as the condonation of delay beyond the period of 60 days is not automatic and is only at the discretion of the Appellate Tribunal. Therefore, if recovery proceedings are to be initiated before the expiry of the period of limitation of 60 days for filing an appeal before the Appellate Tribunal, it would frustrate the entire proceedings and would amount to interfering with the statutory right conferred on the first respondent - dealer under the provisions of the Act. We are also of the considered view that the learned Single Judge was right in allowing the said writ petition.

8. Ms.V.Usha, learned Additional Government Pleader points out that on the date when the said writ petition was filed, the period of six months was over.

9. In our opinion, that may not be crucial test, but what would be relevant is as to whether the recovery notice was issued prior to the expiry of 60 days period. In the instant case, the first respondent - dealer would state that the order passed by the First Appellate Authority dated 09.11.2020 was served on them only on 21.11.2020, that the 60 days period would expire only on 20.1.2021 and that the order of attachment was issued on 27.11.2020, which was well within the period of 60 days period. Hence, the learned Single Judge was right in quashing the attachment notice. However, if the first respondent - dealer has not filed any appeal as on date or if the first respondent filed an appeal before the Tribunal, but has not been successful in obtaining interim orders from the Tribunal, then it will be open to the appellant to initiate steps for recovery of tax and penalty as determined by the Assessing Officer and as confirmed by the First Appellate Authority.

10. The learned Additional Government Pleader, on instructions from the Department, would submit that till date, the first respondent - dealer has not preferred any appeal.

11. If that be so, the appellant shall verify from the Tribunal and after verification if it is found that no appeal has been filed against the order passed by the First Appellate Authority, then it will be open to the appellant to proceed further in accordance with law.

12. With the above observation, the writ appeal is dismissed. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To
The Branch Manager,
HDFC Bank Ltd., Vadapalani,
Chennai-26

2.The Commercial Tax Officer
GD-II, Commercial Taxes
Department, Pudhucherry-5.

+1 cc to Government Pleader Pudhucherry Sr.No. 11369

WA.No.479 of 2021 &
CMP.No.1895 of 2021

A.SK(15.03.2021)