

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.7933 and 7928 of 2021
and WMP Nos.8479, 8481, 8484 and 8486 of 2021

M/s.Sham Interiors
rep. by its Managing Partner
Sameer Ahmed
Main Road IV/1949/1, Sham Complex,
Mahe - 673 310

..... Petitioner in both W.Ps

Vs

The Assistant Commercial Tax Officer
Commercial Taxes Department,
Mahe, Puducherry.

... Respondent in both W.Ps

Prayer in W.P.No.7933 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari calling for the records on the file of the respondent herein his assessment order No.34670006642/ACTO (Mahe)/2020-21/10 dated 18.01.2021 for the year 2015-2016 and consequential notices vide (1) No.TIN34670006642/CTD/ACTO/Mahe/2020-21/76 Dated 23.02.2021 (2) No.TIN34670006642/CTD/ACTO/Mahe/2020-21/81 Dated 23.02.2021 and (3) No.TIN34670006642/CTD/ACTO/Mahe/2020-21 Dated 23.02.2021 and quashing the same.

Prayer in W.P.No.7938 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari calling for the records on the file of the respondent herein in the assessment order for the year 2016-17 vide No.34670006642 / ACTO(Mahe) / 2020-21/10 dated 18.01.2021 and consequential notices vide (1) No.TIN34670006642/CTD/ACTO/Mahe/2020-21/76 Dated 23.02.2021 (2) No.TIN34670006642/CTD/ACTO/Mahe/2020-21/81 Dated 23.02.2021 and (3) No.TIN34670006642/CTD/ACTO/Mahe/2020-21 Dated 23.02.2021 and quashing the same.

For Petitioner : Mr.P.suresh
For Respondent : Mr.J.Kumaran
Additional Government Pleader (Pondy)

C O M M O N O R D E R

Mr.J.Kumaran, learned Additional Government Pleader (Puducherry) accepts notice for the respondent and is armed with instructions to proceed with the matter. Hence, by consent of both sides, these Writ Petitions are disposed finally even at the stage of admission.

2. The petitioner challenges two orders of assessment, both dated 18.01.2021 for the periods 2015-16 and 2016-17 along with notices for attachment dated 23.02.2021, which are garnishee notices issued to the Revenue Administrator, Mahe attaching the properties of the partners of the firm in Mahe Region for the arrears of tax and penalty due to the Government under the provisions of the Puducherry Value Added Tax Act, 2007 (in short 'Act') in terms of Section 40 thereof read with Section 174 of the Puducherry Goods and Service Tax Act, 2017, so as to prevent alienation of the said properties.

3. The impugned orders of assessment dated 18.01.2021 have been served on the petitioner on 19.01.2021 and admittedly, the petitioner has a period of 60 days to file first appeal before the first Appellate Authority constituted under the Act. The impugned notices for attachment dated 23.02.2021 have been issued even prior to the expiry of the appeal period, and are, in my view, pre-mature.

4. I have taken the above view in W.P. No.19775 of 2020 dated 23.12.2020 as follows:

.....

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 Assistant 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) Notwithstanding 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 dismissal 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.

5. Nothing has been said in the course of hearing before me now to persuade me to take an alternate view and I thus reiterate the afore said view taken earlier. The impugned notices are quashed

6. As regards the challenge to the orders of assessment, the primary challenge, though other grounds have been raised in these writ petitions, is violation of principles of natural justice. Thus, without going into the grounds raised by the petitioner on merits, I advert to the ground of grant of personal hearing alone. The provisions of Section 24(3) of the Act reads as follows:

24. Assessment of tax.- (1)

(2)

(3) When making any assessment under sub-section (2), the assessing authority may also direct the dealer to pay in addition to the tax assessed, a penalty not exceeding double the amount of tax due on the turnover that was not disclosed by the dealer in his return or, in the case of failure to submit a return, double the amount of tax assessed, as the case may be:

Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

7. The proviso to Section 24(3) specifically requires that the dealer be afforded reasonable opportunity of being heard prior to framing of an assessment. Such reasonable opportunity, Courts have been consistently held, must include an opportunity of personal hearing. Admittedly, in the present case, the petitioner has not been heard personally prior to the impugned orders having been passed.

8. For the aforesaid reason, the impugned orders dated 18.01.2021 are set aside. The petitioner will appear before the respondent on Thursday, the 15th of April 2021 at 10.30 a.m without expecting or anticipating any further notice in this regard. After hearing the petitioner and considering all/any materials that may be filed in support of the petitioner's contention, orders of assessment shall be passed de novo within a period of four (4) weeks from the date of first hearing.

9. Learned counsel for the petitioner states that post filing of these Writ Petitions, two bank accounts of the petitioner, one in South Indian Bank, Mahe Branch and the second in Canara Bank, Mahe Branch have been attached and a sum of Rs.10.98 lakhs and 1.64 lakhs respectively appropriated. While the attachments shall continue, no further amounts shall be appropriated and the return or otherwise of the amounts appropriated shall be subject to the de novo orders of assessment to be passed in terms of the order as above.

10. These Writ Petitions are allowed and connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commercial Tax Officer
Commercial Taxes Department,
Mahe, Puducherry.

+1 cc to The Government Pleader Sr.No. 20791

W.P. Nos.7933 and 7928 of 2021
and WMP Nos.8479, 8481, 8484 and 8486 of 2021

GSM(CO)
RMP (30/04/2021)

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