IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.7138 of 2022
and
W.M.P.Nos.7155, 7157 & 7158 of 2022

M/s.Excel Engineering Enterprises,
Represented by its Proprietor,
Mr.G.Kumaresan,
No.63, Tamaraikulam,
Elagiri Village Post,
Jolarpettai, Vellore - 635 853. ... Petitioner

Vs.

1. The Assistant Commissioner(ST),
   Thirupattur Assessment Circle,
   No.66, Sama Nagar,
   Thiruppattur - 635 601.

2. The Branch Manager,
   Canara Bank,
   19, North Agraharam Street,
   Krishnagiri Main Road,
   Tirupattur - 635 601. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the impugned proceedings of the first respondent in TIN: 33044621586/2012-2016 dated 07.03.2022 and the connected Form U dated 07.03.2022 addressed to the second respondent and quash both the proceedings as issued without passing the assessment orders for the assessment years TIN 2012-2013 to 2015-2016 under the provisions of the TNVAT Act and so without authority of law and also contrary to the provisions of the TNVAT Act, 2006.

For Petitioner : Mr.P.Rajkumar

For R1 : Mr.V.Prasanth Kiran
Government Advocate

O R D E R

The prayer sought for herein is for a Writ of Certiorari, to call for the impugned proceedings of the first respondent in TIN:33044621586/ 2012-2016 dated 07.03.2022 and the connected Form U dated 07.03.2022 addressed to the second respondent and quash both the proceedings as issued without passing the assessment orders for the assessment years TIN 2012-2013 to 2015-2016 under the provisions of the TNVAT Act and so without authority of law and also contrary to the provisions of the TNVAT Act, 2006.

2. For the Assessment Years 2012-13, 2013-14, 2014-15 and 2015-16, there was an assessment under the Tamil Nadu Value Added Tax Act, 2006 i.e., TNVAT Act in short. As against those orders, the petitioner approached this Court by filing writ petitions in W.P.Nos.13329 to 13332 of 2018 in the matter of Excel Engineering Enterprises Vs. The Assistant Commissioner (CT), Thirupattur Assessment Circle.

3. The learned Judge of this Court, while disposing those writ petitions by order dated 19.06.2018, has passed the following order :

> "7. Accordingly, the writ petitions stand disposed of with a direction to the petitioner to pay 15% of the tax demanded in each of the impugned orders within a period of three weeks from the date of receipt of a copy of this order. If the said condition is complied with, the petitioner is entitled to treat the impugned orders as show cause notices and submit their objections within a period of two weeks therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessments in accordance with law. It is made clear that if the petitioner fails to comply with the condition imposed, the benefit of this order will not enure to the petitioner and the writ petitions will stand automatically dismissed giving liberty to the respondent to initiate recovery proceedings. On the other hand, if the petitioner complies with the said condition, the demand of the balance tax and penalty for the assessment years from 2012-13 to 2015-16 shall remain stayed till fresh orders are passed by the respondent. No costs. Consequently, the connected WMPs are closed."

4. Therefore, the first condition imposed by the learned Judge was that, 15% of the tax demanded in each of the impugned

order therein was to be paid within a period of three weeks from the date of receipt of a copy of that order.

5. Thereafter, within two weeks period treating the orders of assessment, which were impugned in those writ petitions, as show cause notices, and accordingly, reply to be given within two weeks time and on receipt of the same, the Assessing Authority shall proceed to consider those objections or reply by giving a personal hearing to the petitioner/ assessee and ultimately pass an order if necessary.

6. In this context, it is the case of the petitioner, as projected by Mr.P.Rajkumar, learned counsel appearing for the petitioner that, in order to comply with the first condition of 15% of the demanded tax that has been paid on 30.07.2018 i.e., within the period stipulated by this Court by order dated 19.06.2018.

7. Insofar as the second compliance viz., treating it as a show cause notice and to give a reply is concerned, it is the further case of the petitioner that, on 02.08.2018 i.e., within two weeks period reply had been given.

8. Despite the reply having been given, without considering the said reply, after four years, now the impugned orders of attachment of bank account of the petitioner has been passed on 07.03.2022 by the respondent Revenue, challenging the same, the present writ petition has been filed.

9. Reiterating the aforesaid, the learned counsel appearing for the petitioner would contend that, once the conditional order having been complied with by the petitioner/assessee as directed by this Court in the earlier round of litigation by order dated 19.06.2018, the Revenue could have proceeded to consider the said objections or reply and accordingly, pass an order with regard to the assessment or otherwise, without passing any such orders they cannot straightaway come forward to recover the amount by attaching the bank account of the petitioner. Therefore, the impugned order on that ground itself is vitiated, hence, he seeks indulgence of this Court against the impugned order.

10. Mr.V.Prasanth Kiran, learned Government Advocate appearing for the respondent Revenue has pointed out that, insofar as the first condition of paying 15% of the demanded tax is concerned, though the petitioner had complied with the same within the time, subsequently, the second condition to give a reply to the show cause notice treating the earlier orders of assessment as a show cause notice, the petitioner has not complied with.

11. With regard to the claim now made by the petitioner that, on 02.08.2018 reply had been given is concerned, that reply had never been received or never been given, as no acknowledgment or no proof to that effect has been filed. Therefore, according to the Revenue counsel, there is no such compliance on the second part of the conditional order. Therefore, it is free on the part of the Revenue to proceed to recover the tax demanded as per earlier orders that is the reason why the present attachment has been made, hence, such order does not warrant any interference from this Court.

12. I have considered the rival submissions made by the learned counsel appearing for the parties.

13. Now, the only controversy is, whether on 02.08.2018 as claimed by the petitioner, the reply had been given treating the earlier orders as a show cause notice as directed as a condition by the learned Judge in the earlier round of litigation or not.

14. In this context, even though vehemently contended by the learned counsel appearing for the petitioner that, on 02.08.2018 reply had been given, it appears that the said reply whether had been given or not cannot be concluded now as there is no proof to that effect. In view of the stand taken by the Revenue that, no such reply had been given, this Court has to consider that no such reply had been filed by the petitioner in time.

15. If the second condition is not complied with, then as per the orders of this Court in the earlier order referred to above dated 19.06.2018, the Revenue is not precluded from proceeding to recover the money. Therefore, the present order of attachment, which is impugned herein has been passed.

16. To that extent, this Court feels that, there can be no procedural irregularity on the part of the Revenue in passing the impugned order.

17. However, insofar as the tax demand or due with penalty is concerned, it comes about Rs.51,32,799/-, out of which, according to the petitioner counsel, a sum of Rs.8,99,352/- is on a different foot, where entry tax demand has been made, that assessment order also has been set aside by this Court in the earlier round of litigation, pursuant to which, no further proceedings have been issued, therefore, that demand cannot be now made without passing any order as per the direction of this Court made earlier.

18. If the said amount of Rs.8,99,352/- is deducted from

the total demand, now made it comes out about Rs.42,00,000/- and odd.

19. In order to balance both sides and to meet the ends of justice, this Court feels that out of this Rs.42 lakhs due i.e., tax demand + penalty, if the petitioner comes forward to pay 50% of the amount, an indulgence can be shown by this Court, under which, the matter can been remitted back to the respondent for re-consideration. While re-considering the same, the 02.08.2018 reply said to have been given by the petitioner can be considered and after giving an opportunity of personal hearing, final orders of assessment can be passed. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders :

(i) That the matter is remitted back to the respondent for re-consideration as directed by the earlier order of this Court dated 19.06.2018 on condition that, the petitioner shall deposit or pay the 50% of Rs.42,00,000/- as indicated above within a period of two weeks from the date of receipt of a copy of this order.

(ii) Failing which, the Revenue is not precluded from proceeding further pursuant to the impugned order of attachment and for any other recovery mode to recover the tax due.

(iii) Once the 50% of the said amount as indicated above is paid within the time stipulated, then the impugned order shall be kept in abeyance till the decision to be made with regard to the assessment as indicated above and such assessment proceedings after giving an opportunity of being heard to the petitioner by considering the 02.08.2018 reply shall be made and final order shall be passed within a period of six weeks thereafter.

(iv) It is further made clear that, once the conditional order of 50% is paid, the attachment of the bank account of the petitioner made pursuant to the impugned order shall be lifted.

20. With these directions, observations and the conditions imposed, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

sp/sgl

To

1. The Assistant Commissioner(ST),
   Thirupattur Assessment Circle,
   No.66, Sama Nagar,
   Thirupattur - 635 601.

2. The Branch Manager,
   Canara Bank,
   19, Agraharam Street,
   Krishnagiri Main Road,
   Tirupattur - 635 601.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.19799

W.P.No.7138 of 2022

MT(CO)
SU(22/04/2022)