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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.03.2022

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.Nos.7424 & 7425 of 2022
and
WMP.Nos.7419 & 7420 of 2022

M/s.RPP Ready Mix.,
Rep. By its Partner P.Selvasundaram
No.312, Mullamparappu
N.G.Palayam Post,
Erode. ...Petitioner in both Wps

Vs.

1. The Additional Chief Secretary/Commissioner,
Commercial Taxes, Ezhilagam,
Chepauk, Chennai-5.

2. The Deputy Commissioner (ST) Appeals,
Office of the Appellate Deputy Commissioner,
Commercial Taxes Building,
No.1, Borough Road, Erode-638 001.

3. The Assistant Commissioner(ST),
Kodumudi Assessment Circle,
Commercial Taxes Building,
Karur-639 001. … Respondents in both Wps

Prayer in W.P.No.7424 of 2022: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the first respondent to restrain the 3rd respondent or any other officers under his control and jurisdiction from proceeding with the recovery of the balance taxes of Rs.52,41,078/-/- and penalty of Rs.104,82,156/- arising out of the Assessment order No.TIN No.33762904969/2013-2014 dated 22.11.2019 on the file of the Third respondent for the assessment year 2013 - 2014 till orders are passed by the second respondent in the stay petition No.4/2020 pending before the said authority.

Prayer in W.P.No.7425 of 2022: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a

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Writ of Mandamus, directing the first respondent to restrain the 3rd respondent or any other officers under his control and jurisdiction from proceeding with the recovery of the balance taxes of Rs.35,61,349/- and penalty of Rs.47,48,466/-/- arising out of the Assessment order No.TIN No.33762904969/2012-2013 dated 22.11.2019 on the file of the third respondent for the assessment year 2012 - 2013 till orders are passed by the second respondent in the stay petition No.3/2020 pending before the said authority.

For Petitioner:Mr.J.V.Niranjan (in both Wps)

For Respondents:Mr.M.Venkateswaran (in both Wps)
Spl. GP.

COMMON ORDER

Since the issues involved in the present cases is one and the same and hence, these writ petitions have been disposed of by way of common order.

2. These Writ Petitions have been filed seeking direction to the first respondent to restrain the 3rd respondent or any other officers under his control and jurisdiction from proceeding with the recovery of the balance taxes and penalty arising out of the Assessment order No.TIN No.33762904969/2012 -2013 and 2013-2014 dated 22.11.2019 on the file of the second respondent for the assessment years 2012-2013 & 2013 - 2014 till orders are passed by the second respondent in the stay petition Nos.3 and 4/2020 pending before the said authority.

3. The facts of the case are as follows:

The petitioner-Firm is engaged in manufacture and sale of ready-mix concrete, which has various applications in building industry. The nature of the product is such that it is required to be used within a short time from its manufacture and any storage for a short duration is possible only in rotating tanks with regular addition of water and be it in the site of manufacture or during transportation, the product is only stored in rotating tanks with facilities to add water to the same and for this purpose, special equipment is installed in the trucks, which alone are capable of transporting the product and the equipment installed in the trucks are capable of discharge of the product at the building sites. The product is required to the transported to the building sites for use therein and for this purpose, special vehicle with equipment installed thereon are used for such transportation from the place of manufacture

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to the site of its utilisation.

4. Till the year 2017, the petitioner firm was clearing its products on payment of value added tax levied under Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'VAT') on the sale price of concrete. The petitioner-firm was in receipt of notice dated 10.03.2015 proposing revision of the assessment for the years 2012-2013 & 2013-2014 by adding the freight charges to the turnover. The petitioner-Firm filed their detailed objection on 12.07.2015. The 3rd respondent without considering the objection, passed assessment order dated 04.01.2016 for the assessment years 2012-2013 & 2013-2014 by including the freight in the turnover and demanded tax on the same, for which the petitioner-firm filed a writ petition before this Court in W.P.Nos.18434 & 18435 of 2017. This Court, vide order dated 31.07.2017, allowed the writ petitions by quashing the assessment orders and was directed the third respondent to consider all the affidavit of the buyers of the petitioner-firm filed by the petitioner-firm.

5. Pursuant to the above orders of this Court, again on 13.08.2019, the third respondent issued another notice demanding the payment of taxes and penalty within two days, failing which recovery by means of attaching the bank accounts of the petitioner-firm. On 14.10.2019, the third respondent issued a final hearing notice fixing the date as 28.10.2019. On receipt of the same, on 29.10.2019, the petitioner-firm made representation to the third respondent for withdrawal of the recovery notice dated 13.08.2019 and the petitioner-firm have filed their written submission on 08.11.2019. Without considering any submissions, the third respondents passed assessment orders dated 22.11.2019 for the years 2012-2013 & 2013-2014 by including the freight charges in the turnover and demanded taxes. Aggrieved against the said orders, the petitioner firm filed appeals before the second respondent, after making pre-deposit of 25% of the taxes demanded and along with the appeals, petitions for stay of recovery of the balance tax was also filed and the same was numbered as Stay Petition Nos.3 & 4 of 2020. However, till date, the said stay petitions are pending. In the meanwhile, the respondents are hurriedly taking steps to recover the amount from the petitioner-firm. Aggrieved by the said action of the second respondent, the petitioner-firm filed the present petitions before this Court seeking appropriate remedy.

6. The learned counsel for the petitioner submitted that while filing the appeals, the petitioner-firm have already

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deposited 25% of the assessment amount before the third respondent. Apart from that, the petitioner-firm is ready to pay another 25% of the assessment amount before the third respondent within a period of two weeks from the date of receipt of a copy of this order. Hence, this Court may issue direction to the respondents not to recover the balance 50% of the assessment amount, till the disposal of the appeal filed before the second respondent and accordingly, allow these petitions.

7. The learned Special Government Pleader appearing on behalf of the respondents submitted that he has no objection for depositing 25% of the assessment amount to the respondents and this Court may issue a direction to the second respondent to dispose of the stay petitions filed by the petitioner-firm within a period of eight weeks from the date of receipt of the payment of the balance 25% of the demand amount.

8. Heard both sides and perused the materials available on record in both the writ petitions.

9. The facts of the case are not in dispute. Admittedly, the petitioner-firm have already filed appeals on 24.12.2019 before the second respondent after depositing 25% of the assessment amount as against the order dated 22.11.2019. The grievance of the petitioner is that the stay petitions filed by them, still pending and in the meantime, the third respondent hastily tried to collect the assessment amount from the petitioner-firm. The learned counsel for the petitioner fairly conceded that without prejudice their rights, the Firm is ready to pay 25% of the assessment amount to the third respondent within the stipulated time as fixed by this Court.

10. Considering the facts and circumstances of the case and the submission made by the learned counsel appearing on behalf of the Firm, this Court passes the following orders:

(i) to deposit 25% of the assessment amount within a period of two weeks before the respective authority;
(ii) After receipt of the same, the second respondent is directed to decide the appeals along with stay petitions, independently, in accordance with law, after providing opportunity to the petitioner as well as the third respondent, within a period of eight weeks, thereafter; and
(iii) In the meantime, the respondents are directed not to take any coercive steps against the petitioner-firm, till the disposal of the appeals. However, this

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order will not be applicable, if the petitioner fails to deposit the another 25% amount as agreed.''

11. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Rli

To

1. The Additional Chief Secretary/Commissioner,
   Commercial Taxes, Ezhilagam,
   Chepauk, Chennai-5.

2. The Deputy Commissioner (ST) Appeals,
   Office of the Appellate Deputy Commissioner,
   Commercial Taxes Building,
   No.1, Borough Road, Erode-638 001.

3. The Assistant Commissioner(ST),
   Kodumudi Assessment Circle,
   Commercial Taxes Building,
   Karur-639 001.

+2cc to Mr.J.V.Niranjan & Associates, Advocate Sr.21121
[29/03/2022]

+1cc to the Special Government Pleader(Taxes), Sr.No.21129
[30/03/2022]

W.P.Nos.7424 & 7425 of 2022

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