IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NOS.7552 & 7559 OF 2022
AND
W.M.P.NOS.7553, 7554, 7567 & 7569 OF 2022

Tvl.Sai Constructions,
Rep. By its Proprietor
2/185, Valluvar Nagar,
A.Jettihalli Post,
Dharmapuri - 636 705.
... Petitioner in both WPs

Vs

1. The Assistant Commissioner (ST),
Dharmapuri Assessment Circle,
Dharmapuri.
... 1st respondent in both WPs
2. The Branch Manager,
Corporation Bank,
No.14, Q2, Salem Main Road,
Near Indian Bank,
Microsat Branch, Opp Medical College,
Dharmapuri - 636 701.
... 2nd respondent in WP.No.7552/2022
2. The Branch Manager,
Federal Bank,
No.22, A/P. R.Sundaram Iyer Street,
Dharmapuri - 636 701.
... 2nd Respondent in WP.No.7559/2022

Prayer in WP.No.7552 of 2022 :

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus directing the first respondent to lift the order of bank attachment of the petitioner Current Account held with the second respondent herein in pursuant to the impugned Garnishee Proceedings in TIN: 33403285601/PAN-CDZPS4367J/dated 21.03.2022 from the files of the first respondent herein and quash the same.

Prayer in WP.No.7559 of 2022 :

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus directing the first respondent to lift the order of bank attachment of the petitioner Current Account held with the second respondent herein in pursuant to the impugned Garnishee Proceedings in TIN: 33403285601/PAN-CDZPS4367J/dated 18.03.2022 from the files of the first respondent herein and quash the same.

In both WPs

For Petitioner : Mrs.Aparna Nandakumar

For Respondents : Mr.R.Siddharth
Government Advocate (for R1)

COMMON ORDER

The petitioner was a registered dealer under the Tamil Nadu Value Added Tax Act, 2006. For the assessment year 2016-17, there was an assessment proceedings dated 07.12.2020. The said assessment proceedings could not be immediately appealed before the Appellate Authority by the assessee dealer due to Covid-19 first wave as well as second wave. However, the appeal has been filed on 24.03.2022 before the Appellate Authority by paying the 25% pre-deposit as a mandatory condition of the tax demand. Now the appeal having been entertained is pending consideration before the Appellate Authority. In the meanwhile, the Assessing Authority, in order to recover the demand, has already issued Garnishee order to attach the Bank accounts of the petitioner in two separate Banks by proceedings dated 21.03.2022.

2. The said proceedings issued by the Revenue to attach the Bank accounts of the petitioner in two separate Banks by proceedings dated 21.03.2022 are under challenge in these writ petitions.

3. Mrs.Aparna Nandakumar, learned counsel appearing for the petitioner dealer would contend that, already 25% of the demand have been paid as a pre-deposit before filing the appeal and in the meanwhile, since the Bank accounts of the petitioner have been attached, the petitioner's business has been crippled and insofar as getting an order of lifting the attachment from the Appellate Authority is concerned, since there is no regular sitting of the Appellate Authority and the next sitting of the Appellate Authority is April or next month, before which, if the attachment is not lifted, the petitioner would get prejudiced.

4. The learned counsel would also contend that, in order to show the bona fide on the part of the petitioner dealer as a condition precedent to lift the attachment already been made against the two accounts of the Bank of the petitioner, the petitioner would come forward to pay another 25% of the demand and if that is considered and the Bank attachment are lifted by setting aside the present orders which are impugned herein, the petitioner would be satisfied.

5. Heard Mr.R.Siddharth, learned Government Advocate appearing for the respondent Revenue, who would submit that, only after issuing the Garnishee order which are impugned herein, the petitioner has chosen to file an appeal on 24.03.2022 even though the assessment orders were passed in December, 2020. If the petitioner now comes forward to pay another 25% of the demand, that may be considered only as a condition for lifting the attachment and that would not preclude the Revenue from demanding any further, unless and until, an overall stay is granted by the Appellate Authority against the assessment order.

6. I have considered the said submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

7. As has been stated by the learned counsel appearing for the petitioner, 25% of the demand has already been deposited as a pre-condition for entertaining the appeal before the Appellate Authority, now the learned counsel, on instruction would submit that, another 25% would be paid, therefore, altogether there will be a payment of 50% of the demand, hence, this Court feels that, after getting 50% of the demand pursuant to the assessment order, which are subject matter before the Appellate Authority, the continuous attachment of the Bank accounts would no way helpful either to the petitioner or to the Department, because, unless the transaction is permitted to take place the petitioner cannot flourish in his business and moreover, whether the demand made pursuant to the assessment order which are subject matter in the appeal before the Appellate Authority is justifiable or not has to be decided at a later date, before which, beyond 50%, this Court feels that, the Revenue cannot expect from the petitioner dealer to pay.

8. In such view of the matter, these writ petitions are disposed with the following orders:

> That the impugned orders are set aside, consequently the attachment of the Bank accounts of the petitioner in both the Banks covered under these two writ petitions are lifted on condition that, the petitioner shall

deposit further 25% of the demand apart from the 25% already been deposited as a pre-condition to entertain the appeal before the Appellate Authority, within a period of two weeks from the date of receipt of a copy of this order. It is made clear that, only after making the deposit, the order lifting the attachment of the Bank Account shall come into effect.

9. With these observations and directions, these Writ Petitions are ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Assistant Commissioner (ST),
   Dharmapuri Assessment Circle,
   Dharmapuri.

2. The Branch Manager,
   Corporation Bank,
   No.14, Q2, Salem Main Road,
   Near Indian Bank,
   Microsat Branch, Opp Medical College,
   Dharmapuri - 636 701.

3. The Branch Manager,
   Federal Bank,
   No.22, A/P. R.Sundaram Iyer Street,
   Dharmapuri - 636 701.

+2ccs to M/s.Aparna Nandakumar, Advocate, S.R.No.20898
+1cc to the Special Government Pleader, S.R.No.21478

W.P. Nos.7552 & 7559 of 2022

SRA(CO)
PM/30/03/2022