IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.9405, 9409, 9415, 9418,
9422, 9425 & 9429 of 2022
and
W.M.P.Nos.9162, 9163, 9164, 9165,
9167, 9170, 9172, 9173 & 9176 of 2022

W.P.No. 9405 of 2022:

K.E.C. International Ltd.,
Represented by its Authorized Signatory,
No.126/106, Rajiv Gandhi Road,
Salem - 636 007. ... Petitioner in all 7 WP's

Vs

1.The Assistant Commissioner (ST) (FAC),
Arisipalayam Assessment Circle,
Fort Main Road, Salem - 636 001.

2.The Joint Commissioner (ST),
State Taxes Department, Pitchards Road,
Salem - 636 007.

3.The Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

4.The Branch Manager,
Axis Bank,
87, Atur House DR Annie Besant Road,
Worli Naka, Mumbai - 400 018.

5.The Branch Manager,
State Bank of India,
Jawahar Vyapar Bhawan,
11 and 12 Floor, 1 -Tolstoy Marg,
New Delhi - 110 001.

6.The Branch Manager,
ICICI Bank,
Shevapet Branch,
Salem - 639 009. ... Respondents
in all 7 WP's

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the 1st respondent in CST No.705491/11-12 dated 19.02.2019, CST.No.705491/12-13, 19.02.2019, CST.No.704591/13-14, 19.02.2019, CST.No.705491/14-15, 19.02.2019, CST.No.704591/15-16, 19.02.2019, CST.No.705491/16-17, dated 28.12.2020, CST.No.705491/17-18, dated 31/12/2020 respectively and quash the same.

In all WPs
For Petitioner : Mr.Raghavan Ramabadran
For Mr.Lakshmi Kumaran and
Sridharan Attorneys
For Respondents1 to 3: Mr.C.Harsha Raj
Additional Government Pleader

COMMON ORDER

Since the issue raised in these writ petitions is one and the same, with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and are being disposed of by this common order.

2. In respect of assessment years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18, there was a CST assessment against the petitioner. For all these assessment years, after completing the assessment, orders of assessment were passed and served on the petitioner sometime in February, 2020. Those orders have not so far been challenged before the Appellate Authority, however, belatedly only now these assessment orders have been challenged in these writ petitions. The reason for the belated filing of these writ petitions challenging the assessment orders without even going before the Appellate Authority is that, there has been an order of attachment passed by the authorities of the three Bank accounts of the petitioner assessee and that is the reason why the petitioner has now come forward to file these writ petitions challenging the assessment orders which have admittedly been served on him in February, 2020.

3. At the threshold, this Court was of the view that, since there is no single plausible reason available for the petitioner assessee to challenge these orders before this Court as the petitioner could have filed an appeal before the Appellate Authority and also these writ petitions have been filed only in the year 2022 after two years without taking any steps against the orders of assessment served on the petitioner in February 2020, hence these writ petitions can be rejected on the ground of latches.

4. However, Mr.Raghavan Ramabadran, learned counsel appearing for the petitioner would submit that, though there is no reason for such a delay in approaching this Court, still the petitioner atleast can file appeal before the Appellate Authority due to the time extended by the suo motu proceedings issued by the Hon'ble Supreme Court due to Covid-19 situation, under which, before May 2022, appeal could be filed against the assessment orders before the Appellate Authority.

5. However, the learned counsel for the petitioner made a request for consideration of this Court that, if the petitioner go before the Appellate Authority, there will be a pre-deposit of 25% and further 25% for the grant of stay or for lifting the attachment of the Bank accounts. Therefore, that kind of 50% of the demand of tax as per the subsequent demand proceedings dated 28.03.2022 if it is paid by the petitioner as a condition within a time frame that may be stipulated by this Court, the petitioner immediately can be relegated to go before the Appellate Authority to file appeals against these impugned orders.

6. In respect of this arrangement as projected by the learned counsel for the petitioner, the learned Additional Government Pleader appearing for respondents 1 to 3 would submit that, since the total due payable by the petitioner including the penalty and interest comes to Rs.4,01,95,166/-, out of which, insofar as the assessment year 2009-2010, the issue has been separately dealt with in a separate writ petition, which is also pending before this Court. Therefore, deducting the said amount of Rs.44,189/- which is the due payable by the petitioner towards the Revenue for the assessment year 2009-2010, entire remaining amount shall be taken into account for the purpose of making this interim arrangement of paying 50% as a condition precedent.

7. The learned counsel for the petitioner would also submit that, in order to enable the petitioner to withdraw the money and paying it to the Revenue the 50% of the demand of tax without penalty and interest, one out of the three Banks viz., Axis Bank, Worli Branch, Mumbai can be freed i.e., the Bank attachment of the petitioner in that Bank can be lifted or directed to be lifted so that the petitioner can utilise the money lying in that account to pay the 50% of the demand.

8. I have considered the said submissions made by the learned counsel appearing for both sides.

9. In respect of the aforestated assessment years, the total tax due payable by the petitioner as per the demand letter dated 28.03.2022 is Rs.1,70,25,921/-. Insofar as the penalty and

interest component, it comes as Rs.1,04,83,495/- and Rs.1,26,85,750/- respectively, altogether the grand total comes Rs.4,01,95,166/-.

10. As rightly pointed out by the learned counsel for the petitioner, if appeal is filed, the pre-deposit condition would be imposed only in respect of the due payable by the petitioner against the tax demand and not penalty or interest. Therefore, this Court feels that, if the petitioner comes forward to pay 50% of the tax demand, i.e., 50% of Rs.1,70,25,921/-, approximately Rs.85,00,000/- within a time frame on condition that, one out of the three Banks viz., ICICI Bank, Shevapet Branch, Salem, State Bank of India, Tolstoy Marg, New Delhi and Axis Bank, Worli Branch, Mumbai, if attachment made in Axis Bank, Worli Branch, Mumbai can be lifted for the period of two weeks enabling the petitioner to pay this Rs.85,00,000/-, that could be a workable arrangement, based on which, the petitioner can approach the Appellate Authority challenging all these impugned assessment orders by filing regular appeal, where, the pre-deposit conditions can be waived in view of the payment of the 50% of the amount now is directed to be paid by virtue of this order of the Court.

11. In view of the aforestated, this Court is inclined to dispose of all these writ petitions with the following orders:

(i) That the respondents are hereby directed to lift the attachment made against the petitioner's account lying at Axis Bank, Worli Branch, Mumbai forthwith. On such lifting of attachment, the petitioner shall deposit a sum of Rs.85,00,000/- (Rupees Eighty Five lakhs only) being 50% of the tax demand for the assessment years referred to above, to the extent of Rs.1,70,25,921/-, within a period of one week.

(ii) On such payment, no further persuasive action shall be taken by the Revenue in pursuance of the impugned assessment orders including the demand letter dated 28.03.2022.

(iii) It is open to the petitioner to approach the Appellate Authority within two weeks period to file regular appeals against the impugned assessment orders.

(iv) If such appeals are filed, the Appellate Authority need not impose any pre-deposit condition till the disposal of the appeals.

(v) If the conditional order of payment of 50% referred to above, is not made within the one week period as indicated above, it is open to the Revenue to pass a fresh order to make attachment of the said Bank, viz., Axis Bank, Worli Branch, Mumbai account of the petitioner also and can proceed to recover the amount in the manner known to law.

(vi) It is made clear that, insofar as the attachment made in ICICI Bank, Shevapet Branch, Salem and State Bank of India, Tolstoy Marg, New Delhi, where also the petitioner is having account, such attachment shall continue till the disposal of the appeal or any order to be passed in this regard by the Appellate Authority.

(vii) It is further made clear that, depending upon the prompt compliance of all these directions, referred to above, on the side of the assessee, if he comes forward to make any such application before the Appellate Authority to lift the attachment in respect of other two Banks viz., ICICI Bank, Shevapet Branch, Salem and State Bank of India, New Delhi, that application shall be considered objectively depending upon the compliance of the petitioner as indicated above and orders can be passed thereon.

12. With these directions, all these Writ Petitions are disposed of with liberty to the petitioner to approach the Appellate Authority.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Assistant Commissioner (ST) (FAC),
Arisipalayam Assessment Circle,
Fort Main Road, Salem - 636 001.

2.The Joint Commissioner (ST),
State Taxes Department, Pitchards Road,
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11 and 12 Floor, 1 -Tolstoy Marg,
New Delhi - 110 001.

6.The Branch Manager,
ICICI Bank,
Shevapet Branch,
Salem - 639 009.

Copy to: The Section Officer,
E.R.Setion,
High Court, Madras.

+7ccs to Mr.Lakshmi Kumaran, Advocate, S.R.No.25577
+1cc to Special Government Pleader, S.R.No.26635

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9422, 9425 & 9429 of 2022

SG(CO)
CB(20/04/2022)