



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A. No. 1208 of 2022

and

C.M.P. Nos. 7699 and 7701 of 2022

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

.. Appellant

Versus

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

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

.. Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order passed by the learned Judge in W.P. No. 7138 of 2022, dated 24.03.2022.

Prayer in W.P. No. 7138 of 2022 : 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 7.3.2022 and the connected Form U dated 7.3.2022 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 Appellant : Mr.P.Rajkumar

For Respondents : Mr.V.Prashanth Kiran, GA(T)



JUDGMENT

[Judgment of the court was delivered by R.MAHADEVAN,J.]

According to the appellant, they are engaged in civil and engineering works contract mainly for the State Government Departments and a registered dealer on the files of the first respondent under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 and earlier Tamil Nadu Value Added Tax Act, 2006. Between 07.02.2016 and 09.02.2016, the place of business of the appellant was inspected by the Enforcement Wing Officials and they alleged various defects including purchase omission and consequential sales suppression, which was objected to by the appellant. While so, without issuing any notice, the appellant was served with the assessment orders dated 28.03.2018 for the assessment years from 2012-13 to 2015-16 under the TNVAT Act, 2006, levying tax along with penalty. Besides this, the first respondent passed the assessment order dated 28.03.2018 for the assessment year 2015-16 levying entry tax and penalty on the paver finisher purchased by the appellant from a dealer in Gujarat, which was challenged by the appellant by filing WP.No.13320 of 2018. By order date 12.06.2018, the said writ petition was disposed of, in the following terms:

"6.... In the result, this writ petition is disposed of by directing the petitioner to treat the impugned order as a show cause notice and subject their objections within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall consider the same as well as the documents on brochures that the petitioner may produce and if necessary, the respondent can inspect the equipment and then after affording an effective opportunity of personal hearing, redo the assessment in accordance with law. Till the assessment is completed in terms of the above direction, no coercive action shall be initiated against the petitioner..."

2.The appellant further averred that as against the assessment orders dated 28.03.2018 for the assessment years from 2012-13 to 2015-16 under the TNVAT Act, 2006, they filed WP Nos.13329 to 13332 of 2018, which were disposed of, by order dated 19.06.2018, the operative portion of which is quoted below for ready reference:

"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



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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."

Pursuant to the order passed in WP.No.13320 of 2018, the appellant filed its objections on 02.08.2018 to the first respondent. As per the order dated 19.06.2018 made in WP.Nos.13329 to 13332 of 2018, the appellant paid 15% of the disputed tax by way of demand drafts dated 30.07.2018 bearing Nos.924181, 924180, 924182 and 924183 for Rs.16,546/-, Rs.2,32,467/-, Rs.1,06,851/- and Rs.91,078/- in respect of the respective assessment years from 2012-13 to 2015-16; and also filed its objections dated 02.08.2018 before the first respondent. However, no opportunity of personal hearing was provided to the appellant, as directed by the learned Judge, in the orders passed in the writ proceedings.

3.Be that as it may, the appellant got an information that its bank account with the second respondent has been attached by the first respondent through the proceedings dated 07.03.2022 enclosing Form U, in which, a demand of Rs.51,32,799/- was raised, towards the balance taxes along with penalty for the assessment years in question and the entry tax along with penalty raised in the assessment order dated 28.03.2018 passed for the year 2015-16. Stating that the first respondent without passing assessment orders afresh, attached the bank account of the appellant lying with the second respondent by proceedings dated 07.03.2022, which is arbitrary, illegal and contrary to law, WP.No.7138 of 2022 came to be filed by the appellant, to quash the same. By order dated 24.03.2022, the said writ petition was disposed of by the learned Judge, in the following terms:

(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.



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(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.

Aggrieved over the same, the appellant is before this court with this writ appeal.

4. According to the learned counsel for the appellant, pursuant to the order dated 19.06.2018 passed in WP Nos.13329 to 13332 of 2018, the appellant has already paid 15% of the disputed tax on 30.07.2018 and filed its objections on 02.08.2018. However, the first respondent, instead of passing the assessment orders afresh, attached the appellant's bank account, after nearly four years. Adding further, the learned counsel submitted that the amounts mentioned in the impugned bank attachment proceedings issued by the first respondent for the assessment years from 2012-13 to 2015-16 under the TNVAT Act mainly relates to the tax on the estimated sales turnover based on the details taken from the seller's Annexure II through departmental website, but without providing any details to the appellant, which is clearly contrary to the law laid down by this court in the case of M/s.JKM Graphics Solutions Private Limited, by order dated 01.03.2017 in WP.No.105/2016 etc. cases. In respect of the demand raised for the year 2015-16 on entry tax, it is submitted that the same cannot be sustained because the paver finisher is not liable for entry tax as the said machinery is not a motor vehicle liable for registration under the Motor Vehicles Act and that, a Co-ordinate Bench of this court in the case of RDS Projects v. Commercial Tax Officer, 8 VST 574, has held that 'entry tax is not payable in respect of the hydraulic excavator because they are not motor vehicles falling within the definition of the term as defined under section 2(28) of the Motor Vehicles Act, 1988'. Stating so, the learned counsel submitted that without taking note of those aspects, the learned Judge directed the appellant to pay another 50% of the disputed tax for the purpose of lifting the bank attachment and directing the first respondent to pass assessment orders, by the order impugned herein, which is erroneous, illegal and against the law and hence, the same is liable to be quashed. It is also submitted that in view of the attachment of the bank account of the appellant, they are unable to run their business and the entire activities of the appellant have come to a grinding halt.



5. On the above contentions, we have heard the learned Government Advocate (Taxes) appearing for the respondents, who sought to justify the orders impugned herein as well as in the writ petition.

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6. It appears that the assessment order dated 28.03.2018 passed by the first respondent for the assessment year 2015-16 levying entry tax and the assessment orders dated 28.03.2018 passed by the first respondent for the assessment years from 2012-2013 to 2015-16 under the TNVAT Act, 2006, were set aside by this court vide orders dated 12.06.2018 and 19.06.2018 respectively. Thereafter, no assessment order afresh was passed by the first respondent till date. While so, the first respondent by proceedings dated 07.03.2022, directed the second respondent to attach the bank account of the appellant for the tax liability, which was challenged in WP.No.7138 of 2022 and the said writ petition was disposed of, by the order impugned herein.

7. It is not in dispute that the appellant has paid 15% of the disputed tax, as directed by the learned Judge, in the order dated 19.06.2018 in WP.Nos.13329 to 13332/2018. However, what was disputed on the side of the respondents is the objections dated 02.08.2018 said to have been filed by the appellant. In view of the same, the learned Judge directed the appellant to pay another 50% of Rs.42,00,000/- representing the balance tax demand & penalty, for the purpose of lifting the attachment made on its bank account. It is the grievance of the appellant that they have been facing serious financial crisis and due to the attachment of the bank account, they could not run their business and meet out the day today activities.

8. Though the order of the learned Judge is quite reasonable, taking note of the plight of the appellant, this court, to sub-serve the interests of justice, is inclined to modify the order dated 24.03.2022 passed in WP.No.7138 of 2022 by reducing the payment of 50% of Rs.42,00,000/- to Rs.15,00,000/- alone and is accordingly, modified. The other directions / conditions issued therein qua passing of the assessment orders, lifting the bank attachment etc. remain unaltered. The time for payment of Rs.15,00,000/- by the appellant is six weeks from the date of receipt of a copy of this judgment.

9. Accordingly, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

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To

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

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

+1cc to Mr.P.Rajkumar, Advocate SR. No. 29926

+1cc to Special Government Pleader (Taxes) SR. No. 30550

W.A. No. 1208 of 2022
and

C.M.P. Nos. 7699 and 7701 of 2022

SMI (CO)

PR (19/05/2022)