IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.05.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.13301 OF 2022
AND
W.M.P.NOS.12575 & 12576 OF 2022

M/s.Janaranjam Enterprises Private Limited,
No.185, Moorthy Nagar II Street,
Thirumullaivoyal,
Chennai - 600 062. ... Petitioner

.Vs.

1. The State Tax Officer
(Commercial Tax Department),
Thirumullaivoyal Assessment Circle (FAC),
Station No.1275/3,
Elephant Gate Bridge Road,
Vepery, Chennai - 600 003.

2. The State Bank of India,
Thirumullaivoyal Branch,
Represented by its Branch Manager,
IFSC Code: SBIN0017934,
Sudharsanam Complex,
24, Sudharsanam Nagar,
MTH Road, Thirumullaivoyal,
Chennai - 600 062.

3. The Appellate Deputy Commissioner
of State Taxes (Legacy),
Chennai - 1. ... Respondents

PRAYER:-

Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent with regard to order in Form U notice dated 17.02.2022 sent by the first respondent to the second respondent and quash the same and direct the second respondent to defreeze the account of the petitioner so as to enable the petitioner to operate the account.

For Petitioner : Mr.P.V.Balasubramaniam
For Mr.V.Chandraprabu

For Respondents

For R1 & R3 : Mr.Richardson Wilson
Additional Government Pleader

ORDER

Mr.Richardson Wilson, learned Additional Government Pleader takes notice on behalf of the first and third respondents.

2. The petitioner has challenged the impugned attachment notice for recovery of money due under Rule 9(4) of the Tamil Nadu Value Added Tax Rules, 2007. It is the specific case of the petitioner that the Assessment Order, pursuant to which, the impugned recovery notice in Form-U has been issued is now the subject matter of review before the Commercial Tax Officer, Thirumullaivoyal Assessment Circle/first respondent herein. That apart, it is submitted that the petitioner has also filed an appeal against the order, sometime in March 2022 and has made a mandatory pre-deposit of 25% i.e. Rs.1,52,165/-, which is pending before the Appellate Deputy Commissioner under Section 51 of the Tamil Nadu Value Added Tax Act, 2006.

3. The learned counsel for the petitioner submitted that the petitioner has a prima facie case on merits inasmuch as, the amount has sought to be taxed is the amount incurred by the petitioner for purchase of certain capital goods for manufacturing goods and that the petitioner was not engaged in sale and purchase of ceramic tiles. It is submitted that the petitioner has explained the same, however, it has been ignored.

4. The learned counsel for the petitioner further submitted that the business of the petitioner had been closed on account of outbreak of Covid-19 and after a very long time, the petitioner has received the purchase order from one M/s.J.K.Fenner (India) Limited for supply of Nylon Inserts (spare parts) and that the impugned recovery notice freezing the attached amount of the petitioner with the State Bank of India, Sudharsanam Complex, 24, Sudharshanam Nagar, MTH Road, Thirumullaivoyal, Chennai - 600 062.

5. It is submitted that the first and third respondents or the Appellate Commissioner may be directed to dispose the proceedings initiated by the petitioner pursuant to the Assessment Order and that would serve the purpose. However,

pending such disposal, the impugned recovery attachment/ proceedings may be lifted.

6. Opposing the prayer, the learned Additional Government Pleader for the first and third respondents would submit that the impugned recovery notice issued in Form-U dated 17.02.2022, is prior to filing of the appeal before the Appellate Deputy Commissioner by the petitioner against the Re-assessment Order dated 21.09.2021. He would further submits that if the petitioner pays another 25%, the order would be lifted.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the first and third respondents.

8. Considering the fact that the petitioner has not continued the business due to outbreak of Covid-19 and considering the fact that the petitioner has already deposited a sum of Rs.1,52,165/- being 25% of the disputed tax, I am inclined to order lifting of the attachment order in the impugned notice in Form-U under Rule 9(4) of the Tamil Nadu Value Added Tax Rules, 2007, subject to the petitioner paying/depositing another sum of Rs.50,000/-. As and when, the aforesaid amount of Rs.50,000/- is deposited by the petitioner, the impugned notice for recovery of money due shall stand automatically vacated. However, this order will not come in the way of the Appellate Deputy Commissioner of State Taxes (Legacy), passing any order to secure the interest of the Department before disposing the appeal filed by the petitioner. It is expected that the appeal filed by the petitioner will be disposed by the third respondent/Appellate Deputy Commissioner of State Taxes (Legacy), Chennai - 1, within a period of three months from the date of receipt of a copy of this order.

9. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Vacation Officer

//True Copy//

Sub Assistant Registrar

jd/arb

To

1. The State Tax Officer
   (Commercial Tax Department),
   Thirumullaivoyal Assessment Circle (FAC),
   Station No.1275/3,
   Elephant Gate Bridge Road,
   Vepery, Chennai - 600 003.

2. The State Bank of India,
   Thirumullaivoyal Branch,
   Represented by its Branch Manager,
   IFSC Code: SBIN0017934,
   Sudharsanam Complex,
   24, Sudharsanam Nagar,
   MTH Road, Thirumullaivoyal,
   Chennai - 600 062.

3. The Appellate Deputy Commissioner,
   of State Taxes (Legacy),
   Chennai - 1.

+1cc to Mr.V.Chandraprabu, Advocate, S.R.No.31709
+1cc to the Special Government Pleader (Taxes), S.R.No.31776

W.P.NO.13301 OF 2022 AND
W.M.P.NOS.12575 & 12576 OF 2022

SRA(CO)
PBS/03/06/2022