BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Monday, the Twenty First day of March Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice C.SARAVANAN

WMP(MD)No.3423 of 2022
in
WP(MD)No.22874 of 2021

1.GGN Spinning Mills(P)Ltd.,
7, East Market,
Theni-625 531.

2.G.Susila
3.G.Balamurugan
4.G.Prabhakar ... Petitioners/Respondents 2 to 5

Vs

1.G.Sadayaramanujam ... 1st Respondent/Petitioner

2.The Assistant Commissioner (ST),
Commercial Tax, Gandhiji Road,
SIDCO Compound, Theni-2. ... 2nd Respondent/ 1st Respondent

Prayer in WMP(MD)No.3423 of 2022 :- Writ Miscellaneous Petition filed under Article 226 of the Constitution of India, to Recall the order dated 09.02.2022 in WP.No.22874/2021 and reopen the Writ Petition and pass such further or other orders as this Hon'ble Court may deem fit.

Prayer in WP(MD)No.22874 of 2021:- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue WRIT OF MANDAMUS or any other appropriate Writ or order or direction in the nature of writ directing the 1st respondent to receive the TAX due of Rs.6,45,414 (Till Nov-21) and Rs.2,81,000 (up to date for December 2021 Approximately) in respect of GSTIN No.33AAACG6670M1ZE without penalty by providing an User ID and Password Temporarily so that the petitioner can file GST -R1 and GST - R3B Returns regularly along with his future Taxes within a time to be stipulated by this Honble Court based on the Communication dated 15.12.2021 by the 1st Respondent.

ORDER:- This Writ Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.J.Chakkkaravarthy, Advocate for the Petitioner, Mr.N.Mohan, Advocate for the 1st Respondent and of Mr.M.Prakash, Additional Government Pleader for 2nd Respondent, this Court made the following order:-

A dispute between the petitioner and his brother late G.Gurusamy has been pending before the Company Law Board and now before the National Company Law Tribunal. The facts on record indicate that the dispute pertains to the Management of the Company, called GGN Spinning Mills Private Limited, which is the second respondent in this writ petition. Unit A of the said company was under the control of the petitioner's brother late G.Gurusamy, whereas the Unit B was under the control of the petitioner.

2. Earlier, by an interim order, dated 25.06.2003, the then Company Law Board in a proceedings initiated by the petitioner against the second respondent and his brother late G.Gurusamy had passed an interim order on 03.08.2006, by allowing the petitioner to open bank account in a Nationalised Bank in the name of the Company and to operate the said company account for carrying out exclusively day-to-day operation of Unit B of the second respondent company. The Company Petition which was filed before the Company Law Board in Company Petition No.29 of 2003, under Section 397 and 398 of the Companies Act, 1956 is still pending before the National Company Law Tribunal after the Company Law Board was taken over by the National Company Law Tribunal. It appears that after the implementation of the Goods and Service Tax, late G.Gurusamy, brother of the petitioner, who was managing the Company had also obtained a Goods and Service Tax Registration. The Company had failed to comply with the requirements under the Companies Act, 2013 and therefore, the name of the Company was struck off from the Register of Companies. It appears that the name of the Company was struck off as early as 2018 and no steps were taken either by the petitioner or by the petitioner's brother, late G.Gurusamy.

3. The facts on record also indicate that the petitioner was required to co-operate with his brother during his life time for restoring the registration of Company to the files of the Registrar of Companies/RD. However, the petitioner has failed to co-operate with his brother, who is now represented by his legal heirs, who have been impleaded as respondents 3 to 5. It appears that the business carried out in Unit A under the control of petitioner's brother and later by the newly impleaded respondents, namely, respondents 3 to 5 have been stopped. They have taken steps for cancelling the Goods and Services Tax Registration. Unit B, on the other hand, under the control of the petitioner is still carrying on business. The revenue cannot be denied of the tax that is payable for the supplies effected by the petitioner from Unit B and therefore, the private respondents, namely, respondents 3 to 5 cannot have a say by stating that the second respondent itself has

ceazed to exist and therefore the petitioner can neither carry on the business nor pay the tax for the supplies already effected. The private dispute between the petitioner and the legal heirs of late G.Gurusamy has to be resolved in the National Company Law Tribunal, which is now seized of the matter. However, as long as there is supply of goods and service from the second respondent from Unit B, there cannot be any embargo from payment of tax. The private respondents also cannot strangulate the business of Unit B under control of the petitioner.

4.At the same time, I am inclined to allow the this Miscellaneous Petition as prayed for. Meanwhile, the petitioner is directed to take steps for revive registration which has been cancelled on account of the failure of the second respondent to file the returns.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

TO
The Assistant Commissioner (ST)
Commercial Tax,
Gandhiji Road,
SIDCO Compound,
Theni-2.

Copy to:

1.The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.

2.The Section Officer,
ER Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC to M/s.King and Partridge, Advocate, SR.No.13770

+ 1 CC to Spl. Govt. Pleader, SR.No.13449

ORDER DATED : 21/03/2022
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ORDER
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WMP(MD)No.3423 of 2022
in
WP(MD)No.22874 of 2021
Giving direction and etc.
as stated within.

KB(31.03.2022) 4P 6C