



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.05.2022

CORAM:

THE HONOURABLE **MR.JUSTICE R.SURESH KUMAR**
and
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.481 of 2022

and

C.M.P.(MD)No.4492 of 2022

Tvl.G.Sankar Timber Depot,
Represented by its Partner
S.Prabhakaran,
No.479, Tenkasi Road,
Piranoor,
Shencottai District.

...Appellant/Petitioner

/Vs./

The State Tax Officer (Adjudication),
(Intelligence Wing),
Tirunelveli District.

...Respondent/Respondent

PRAYER: Writ Petition filed under Clause 15 of the Letter Patent praying this Court to set aside the order dated 25.04.2022 in WP(MD) No.7880 of 2022 and allow this writ appeal.

Prayer in WP(MD) . 7880/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Writ Petition filed under Article 226 of the Constitution of India, praying this court to issue Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent in FORM GST DRC - 16 dated 20.11.2021 and the same was affixed only on 14.12.2021 in a conspicuous place on petitioner premises and quash the same as illegal and consequently directing the respondent to obey the order of this Honble Court in C.M.P.(MD).No.7812, 7813 and 7814 of 2021 in W.A.MD.NO. 691 to 693 of 2021 dated 24.11.2021 and to consider petitioner representation dated 16.12.2021 in accordance with law

For Appellant
For Respondent

: Mr.Anandha Rajagopal
: Mr.S.R.A.Ramachandran
Additional Government Pleader



JUDGMENT

[Judgment of the Court was made by **R.SURESH KUMAR, J.**]

This writ appeal has been directed against the order passed by the Writ Court/learned Single Judge, dated 25.04.2022, made in W.P (MD) No.7880 of 2022.

2.In the said writ petition, the proceedings issued by the revenue in Form GST DRC-16, dated 20.11.2021 to attach the property of the writ petitioner was under challenge.

3.Considering the said challenge and the grounds raised by the writ petitioner in support of the challenge, the learned Judge of this Court by the impugned order having taken note of the earlier proceedings, under which, this Court has given conditional directions to reassess the assessment for three years by making some deposit of amount, had come to a conclusion that, the said challenge cannot be made successfully and accordingly, the writ petition was disposed of, as against which, the present writ appeal has been filed.

4.Mr.Anandha Rajagopal, learned counsel for the appellant has raised a point that in the earlier round of litigation, three assessment orders were under challenge in W.P(MD).Nos.17880, 17885 and 17886 of 2020. Those writ petitions were decided by a common order dated 08.12.2022 by the Writ Court, under which, in each case conditional order was passed, by which, the petitioner was directed to deposit a sum of Rs.3,00,000/- and on such deposit, the matter can be remitted back for reconsideration by the Assessing Authority.

5.Aggrieved by the said order, the appellant in fact filed *intra* Court Appeal in W.A(MD).Nos. 691 to 693 of 2020, which were also decided by a Division Bench of this Court, by order, dated 25.03.2021, where, while confirming the order of the learned Single Judge, the Division Bench had however given four weeks time to comply with the order by the appellant therein, who is the appellant herein, i.e., making the deposit of Rs.3,00,000/- for each assessment year.

6.Pursuant to the said order, immediately, the deposit could not be made, but belatedly that deposit had been made. Therefore, in order to ratify the same, the petitioner had moved an extension application in CMP(MD)Nos.7812, 7813 and 7814 of 202 in the said writ appeal, which were also considered and decided by another Division Bench of this Court by order, dated 24.11.2021, where the amount deposited by the appellant having been taken note of by the Division Bench, the said miscellaneous petitions were disposed of, by thus, the conditional order passed by the learned Single Judge at the first instance though belatedly has been complied with by



depositing the said amount in respect of each of the assessment year.

7. Therefore, the natural corollary would be that, the Assessing Authority has to reassess and complete the assessment for the said three assessment years and to pass the final orders. In this regard, according to the learned counsel for the appellant, personal hearing sought for, that was also given. However, before passing an order under the reassessment process, now the impugned proceedings under Form GST DRC-16 had been issued on 20.11.2021. Therefore, challenging the same, the present writ petition was filed on the ground that before completing the reassessment process as directed by the Writ Court in the first round of litigation as confirmed by the Division Bench, now invoking the provisions of Section 79 of the GST Act, the attachment GST DRC-16 has been issued, that is a wrong order, though attachment proceedings can be initiated by the revenue, only after completing the reassessment process, as directed by this Court.

8. We have heard the learned counsel appearing for the appellant and the learned Additional Government Pleader appearing for Revenue and we have considered the said submissions made by both sides.

9. Insofar as the order impugned before the Writ Court, dated 20.11.2021 i.e., Form GST DRC-16 is concerned, though it has been mentioned as if it was issued under Section 79 of the Goods and Service Tax Act, we find that such attachment order can be construed only as a provisional attachment order made under Section 83 of the said Act. Section 83 enable the revenue to issue provisional attachment order to protect revenue in certain cases and if such orders are issued that will be valid for one year, within which, if the assessment process is completed based on which further proceedings can be initiated by the revenue.

10. Therefore, merely because of the wrong quoting of the provision, the order impugned before the Writ Court cannot be successfully assailed by the appellant, as the law is well settled in this regard. Non-quoting of the provision of law or wrong quoting of the same may not vitiate the proceedings on that ground itself.

11. In that view of the matter, this Court is inclined to pass the following orders that:

There is absolutely no scope for interfering with the order of the learned Judge, which is impugned in this Writ Appeal. Therefore, the Writ Appeal is liable to be rejected. However, this rejection will not preclude the appellant to seek for reassessment, which has already been initiated to be completed in the manner known to law and



passed, depending upon the outcome of the same, the further action pursuant to the impugned order i.e., provisional attachment order can very well be decided.

12. With these observations, the Writ Appeal is dismissed. There shall be no order as to costs. Consequently, connected CMP (MD) No.4492 of 2022 is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

RMK/CP

To

The State Tax Officer (Adjudication),
(Intelligence Wing),
Tirunelveli District.

+1 CC to M/s.SPL.GP (SR-24180[F] dated 27/05/2022)

W.A. (MD) No. 481 of 2022

and

C.M.P. (MD) No. 4492 of 2022

26.05.2022

MGJ(02.06.2022) 4P 3C