IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **27.02.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.6194 of 2023 and W.M.P. Nos.6195 and 6199 of 2023

Lincoln Electric Company (India)
Private Limited,
represented by its Authorised Signatory
Sudhakar Viswanathan ... Petitioner

Vs.

1.The State Tax Officer,
T.Nagar Assessment Circle,
No.46, Greenways Road,
Chennai – 600 028.

2.Deputy Commissioner (CT) Appeals,
Chennai – II (FAC),
3rd Floor, C.T.Building Annexe,
No.1, Greams Road,
Chennai – 600 006.

3.Commissioner of Commercial Taxes,
Chepauk,
Chennai – 600 005.

4.The State Bank of India,
represented by its Branch Manager,
The Canopy,
Natham Sub Post Office,
Chengalpattu Taluk – 600 302. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the Recovery Notice referenced with TIN:33361562224 dated 06.02.2023 issued by the first respondent and the consequential bank attachment vide TIN33361562224/ 2023/A3 in Form U, dated 22.02.2023 of the petitioner's bank account with the fourth respondent and to quash the same.

For Petitioner	:	Ms.R.Charulatha for Mr.Lakshmi Kumaran
For Respondents	:	Mr.V.Prasanth Kiran, Government Advocate for R1 to R3

ORDER

This writ petition has been filed, challenging the recovery notice dated 06.02.2023, issued by the first respondent and the consequential bank attachment dated 22.02.2023, attaching the bank account of the petitioner, lying with the fourth respondent bank on the ground that a Statutory Appellate Authority has quashed the assessment order and remanded the matter for fresh consideration and therefore, without there being any assessment order, the question of recovering the amount pursuant to the impugned recovery notice dated 06.02.2023 as well as the consequential bank attachment dated 22.02.2023 will not arise.

2.Learned counsel for the petitioner drew the attention of this Court to the order passed by the Appellate Authority namely, the second respondent dated 22.02.2023 under which the assessment orders dated 06.03.2020 and 26.09.2020 have been quashed and remanded back to the first respondent for fresh consideration, on merits and in accordance with law. She also drew the attention of this Court to the impugned recovery notice dated 06.02.2023 as well as the consequential bank attachment Form U dated 22.02.2023 and would submit that arbitrarily and by total non application of mind, the impugned recovery notice as well as the bank attachment has been effected on 22.02.2023.

3.Heard Ms.R.Charulatha, representing for Mr.Lakshmi Kumaran, learned counsel for the petitioner and Mr.V.Prasanth Kiran, learned Government Advocate, who accepts notice on behalf of the respondents 1 to 3.

4.Learned Government Advocate appearing for the respondents 1 to 3 does not dispute the submission made by the learned counsel for the petitioner. However, he would submit that insofar as the assessment order pertaining to the assessment year 2015-16 is concerned, the statutory appeal filed by the petitioner was only partly dismissed and partly remanded to the first respondent for fresh consideration, on merits and in accordance with law.

5.Admittedly, in respect of the assessment year 2016-17, the assessment order was in entirety quashed and remanded back to the first respondent for fresh consideration, on merits and in accordance with law and in respect of the assessment year 2015-16, some of the operative portion of the assessment order was quashed and without giving any notice to the petitioner, prior to the attachment and the dues of the recovery notice, the first respondent has attached the back account, lying in the bank account of the petitioner and maintained with the fourth respondent Bank, which in the considered view of this Court, is arbitrary and has been passed by total non application of mind.

6.Learned counsel for the petitioner would submit that the first respondent has already withdrawn a sum of Rs.3,54,000 erroneously from the petitioner's Bank account, maintained with the fourth respondent Bank despite the fact that the assessment order in respect of the assessment year 2016-17 was quashed and in respect of the assessment year 2015-16 was partly quashed and therefore, the amount that has been withdrawn from the petitioner's bank account, lying with the fourth respondent Bank, has to be refunded by the respondents.

7.Insofar as the second submission made by the learned counsel for the petitioner with regard to the refund of the money, lying in the petitioner's bank account, maintained with the fourth respondent Bank, is concerned, the petitioner will have to give a representation for the same to the respondents.

8.No prejudice would be caused to the respondents if the said representation is directed to be considered by the first respondent, on merits and in accordance with law within a time frame to be fixed by this Court.

9.In view of the admitted fact that erroneously, the respondents have issued the impugned recovery notice dated 06.02.2023 and also effected the Bank attachment through Form U dated 22.02.2023 in respect of the fund, lying in the petitioner's bank account, maintained with the fourth respondent Bank, the recovery notice dated 06.02.2023 as well as the Bank attachment in Form U dated 22.02.2023 have to be quashed and the writ petition has to be allowed.

10.For the foregoing reasons, the impugned recovery notice dated 06.02.2023 as well as the consequential bank attachment in Form U dated 22.02.2023 in respect of the bank account of the petitioner, maintained with the fourth respondent are hereby quashed and the writ petition is allowed. The petitioner is permitted to give a representation to the first respondent seeking for refund of the money, which has been erroneously withdrawn from their bank account, maintained with the fourth respondent Bank within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said representation, within the stipulated time, the first respondent shall pass final orders, on merits and in accordance with law within a period of four weeks thereafter. Consequently, connected W.M.Ps stand closed. No costs.

27.02.2023

vga

To

1.The State Tax Officer,
T.Nagar Assessment Circle,
No.46, Greenways Road,
Chennai – 600 028.

2.Deputy Commissioner (CT) Appeals,
Chennai – II (FAC),
3rd Floor, C.T.Building Annexe,
No.1, Greams Road,
Chennai – 600 006.

3.Commissioner of Commercial Taxes,
Chepauk,
Chennai – 600 005.

ABDUL QUDDHOSE,J.

vga

W.P.No.6194 of 2023 and W.M.P. Nos.6195 and 6199 of 2023

27.02.2023