IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.10.2023

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.11282 of 2023
and
W.M.P.No.11157 of 2023

M/s. Eagle Earth Movers (P) Ltd.,
rep. by its Managing Director,
Mr.U.R.Subramaniam ...Petitioner

Vs.

1. The State Tax Officer,
Thiruchengode Town Assessment Circle,
Thiruchengode.

2. Assistant Commissioner (ST)
Thiruchengode Rural Assessment Circle,
Thiruchengode.

3. The Branch Manager,
Axis Bank, Thiruchengode – 637 211.

4. The Commissioner of Commercial Taxes,
First Floor, Ezhilagam,
Chepauk, Chennai – 600 005. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of mandamus directing the first respondent to refund a sum of Rs.81,53,038/- which was recovered from the petitioner's bank account No.912020019716585, in Axis Bank, Tiruchengode Branch towards the alleged arrears of tax and penalty of the petitioner's sister concern M/s.Eagle Earth Movers as illegal and without jurisdiction and contrary to the provisions of the TNVAT Act, 2006.

For Petitioner	: Mr.P.Rajkumar
For Respondents 1, 2 and 3	: Mr.V.Prashanth Kiran Government Advocate (T)
For Respondent -3	: Dispensed with.

ORDER

This Writ Petition is filed for issuance of a Writ, in the nature of mandamus, directing the first respondent to refund a sum of Rs.81,53,038/- which was recovered from the petitioner's bank account No.912020019716585, in Axis Bank, Tiruchengode Branch towards the alleged arrears of tax and penalty of the petitioner's sister concern M/s.Eagle Earth Movers as illegal and without jurisdiction and contrary to the provisions of the TNVAT Act, 2006.

2. The facts of the case in brief is as follows:-

i) The petitioner is a registered dealer on the file of the second respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'the TNVAT Act); Central Goods and Services Tax Act, 2017 (CGST Act), and also under Tamil Nadu Goods and Services Tax Act, 2017 (TNGST Act).

ii) The petitioner was engaged in doing civil contract work, and that too, mainly for Indian Railways. On 01.04.2012, the petitioner concern, viz., Tvl. Eagle Earth Movers Pvt. Ltd. entered into a business succession agreement with the petitioner's sister concern, Tvl.Eagle Earth Movers, whereby, entire business, including its assets and liability standing in the name of petitioner's sister concern, viz., Tvl. Eagle Earth Movers were transferred to the petitioner w.e.f. 01.04.2012. However, in respect of the alleged arrears of the petitioner's sister concern, M/s.Eagle Earth Movers., the respondent-Department issued show cause notices for the three assessment years 2012-13, 2013-14 and 2014-15 to the petitioner Concern, Tvl. Eagle Earth Movers Pvt. Ltd., and the second respondent passed an assessment orders, dated 09.12.2019, pointing out alleged arrears of tax of Rs.81,53,038/- for the assessment years 2012-13, 2013-14 and 2014-15, pursuant to which, the first respondent initiated recovery proceedings and passed an attachment order, directing the third respondent-Bank to attach the petitioner's bank account, and also appropriated the said amount, which necessitated the petitioner to file the present Writ Petition to direct the first respondent to refund a sum of Rs.81,53,038/- which was recovered from the petitioner's bank account.

3. Mr.P.Rajkumar, learned counsel appearing for the petitioner would submit that the grievance of the petitioner is that, in respect of the alleged arrears of the petitioner's sister concern, Tvl.Eagle Earth Movers, the first respondent passed an order, attaching the petitioner's bank account and recovered a sum of Rs.81,53,038/-. Hence, the petitioner's representative approached the first respondent and requested him to withdraw the notice as the attachment was made by the first respondent not for any arrears of the petitioner's concern Tvl.Eagle Earth Movers Pvt. Ltd., but for the alleged arrears of the petitioner's sister concern, Tvl.Eagle Earth Movers. However, without considering the said request, the first respondent appropriated dues of the petitioner's sister concern from the bank account of the petitioner's concern. Further, the learned counsel submitted that it is the case of the respondent-Department that though the petitioner's sister concern continued with its TIN under the same name and style, "Tvl. Eagle Earth Movers, even after such agreement for the three assessment years, viz., 2012-13, 2013-14 and 2014-15, and for three years, they have filed 'nil' returns, and hence, petitioner cannot be mulcted with any liability on behalf of the petitioner's sister concern.

3.1 The learned counsel for the petitioner furthermore submitted that, challenging the assessment order passed by the Assessing Officer, in respect of the assessment years 2012-13, 2013-14 and 2014-15, the petitioner filed W.P.No.10337 of 2020 and W.P.Nos.10338 and 10361 of 2020 and this Court, by order, dated 31.08.2023, set aside the assessment made in respect of assessment years 2013-14 and 2014-15 in W.P.Nos.10338 and 10361 of 2020 and following the said decision rendered by the learned Predecessor Judge, this Court also set aside the assessment made in the respect of year 2012-13 and allowed the W.P.No.10337 of 2020, by today's order (06.10.2023) and therefore, by virtue of the orders passed by this Court, in the aforesaid Writ Petitions, the assessment order for the years 2012-13, 2013-14 and 2014-2015 were directed to be re-assessed and therefore, the amount of Rs.81,53,038/- appropriated by the first respondent from the bank of the petitioner has to be refunded, and hence, the learned counsel prayed for appropriate direction in that regard.

4. Mr.V.Prashanth Kiran, learned Government Advocate (T) for respondents 1, 2 and 4 drawn the attention of the counter affidavit filed by the respondent-Department and submits that by virtue of the agreement dated 01.04.2012, the petitioner's sister Concern transferred their entire business in the name of petitioner concern, viz., Tvl.Eagle Earth Movers Pvt. Ltd., however, despite of such transfer, the petitioner concern has not surrendered the TIN No immediately and to suit their purpose surrendered the TIN No. only in the year 2015, and therefore, the respondent-

Department issued show cause notice to the petitioner Concern instead of petitioner's sister concern.

4.1 The learned Government Advocate for the respondent-Department pointed out that, by virtue of the agreement, petitioner succeeded the business of proprietary concern in the name of Tvt.Eagle Earth Movers and thereby, possessed majority of shares and only for namesake, his two sons and others Directors were added and hence, any dues for the past and present, that existed in the name of Tvl.Eagle Earth Movers is liable to be paid only by the petitioner concern and accordingly, the second respondent issued show cause notices, which culminated in recovery proceedings, whereby, the petitioner's bank account was attached and a sum of Rs.81,53,038/-was recovered from the petitioner's bank account.

4.2 The learned Government Advocate further submitted that though it is the contention of the learned counsel for the petitioner that challenging the assessment order passed by the second respondent dated

09.12.2019, the petitioner filed W.P.No.10337 of 2020, and W.P.Nos.10338 and 10361 of 2020, the petitioner has not obtained any stay and since as on date of appropriation, assessment orders were in force, the respondent-Department proceeded further against the petitioner by initiating recovery proceedings. However, learned Government Advocate fairly conceded that the since the Writ Petitions filed by the petitioner in W.P.Nos.10338 and 10361 of 2020 and W.P.No.10337 of 2020 were allowed by this Court vide orders, dated 31.08.2023 and 06.10.2023 (i.e. today) respectively, and the impugned orders in respect of the assessment years 2013-14 and 2014-15 and 2012-13 were set aside and the matters were remitted back to the Assessing Officer for re-assessment, the learned Government Advocate would submit that the demand raised against the petitioner is not valid. Hence, the learned Government Advocate submits that the Writ Petition may be disposed of issuing appropriate direction.

5. Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (T) for respondents 1, 2 and 4 and perused the materials available on record. So far as third respondent, Axis Bank is concerned, since they are only formal party, notice to them is dispensed with.

6. It is an admitted fact the petitioner entered into an business succession agreement dated 01.04.2012 with the petitioner's sister concern and by means of the said agreement the petitioner's sister concern transferred entire business, including all assets and liability in the name of the petitioner. Therefore, it has to be presumed that in the event, any business is carried on by the petitioner concern, the same would be deemed to have carried out only by the petitioner and based on the same, assessment has to be made by the respondent.

6.1 In the present case, for the liabilities of Tvl.Eagle Earth Movers, bank account of the petitioner was attached and thereafter, the impugned liability of petitioner's sister concern was also realised. This Court already set aside the impugned order of assessment passed against the petitioner's sister concern, quantifying the liability of Rs.81,53,038/- in respect of the assessment years 2012-13, 2013-14 and 2014-15. Now doubt, after the business succession agreement, the petitioner's sister concern continued with the TIN No. till 2015, however, it has not carried any business after the business succession agreement for three assessment years. In this regard, the petitioner's sister concern also filed Nil returns, based on which, assessment was set aside.

6.2 In view of the order passed by this Court in setting aside the assessment made against the petitioner's sister concern, and the amount realized out of the attachment of the petitioner's bank account, Axis Bank, to an extent of Rs.81,53,038/-, is liable to be refunded. Therefore, this Court is inclined to pass orders, directing the respondent to refund the amount, as prayed for by the petitioner.

6.3 In the light of the above facts and circumstances of the case, this Court is inclined to grant the relief sought for by the petitioner, since what the petitioner seeks for is only for refund of the amount appropriated by the respondent-Department from the bank account of the petitioner, in respect of the alleged arrears of the petitioner's sister concern.

6.4 Accordingly, this Writ Petition is disposed of by directing the first respondent to refund the sum of Rs.81,53,038/- to the petitioner's bank account within a period of six weeks from the date of receipt of a copy of this order.

6.5 In the event, by way of re-adjudication of the assessment, if the Adjudicating Officer/Assessing Officer found any transaction in the name of the petitioner's sister concern for the assessment years 2012-13, 2013-14 and 2014-15 they can club the same as related to the business of the petitioner concern, in the light of the agreement, dated 01.04.2012 entered into between the petitioner and the petitioner's sister concern.

7. In the result, this Writ Petition is disposed of on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

06.10.2023

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Index : yes/no
Neutral Citation : yes/no
Note : Issue order 12.11.2023.

To

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Krishnan Ramasamy,J.,

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