IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.14122 and 14125 of 2021 and
W.M.P. Nos.14999, 15001, 15005 and 15006 of 2021

M/s.Tvl.Geoscope Exim Private Limited
Represented by its Authorised Signatory
Mr.P.Prakash
B3 Ceebros Building, 32 Cenotaph Road,
Teynampet, Chennai 600 018. .. Petitioner in both W.P.'s

Vs.

1. Commercial Taxes Department, Puducherry,
   Represented by the Commercial Tax
   Officer – IAC, Puducherry,
   Commercial Tax Office,
   100 Feet Road, Ellaipillaichavadi,
   Puducherry - 605005.

2. Bank of Baroda,
   Represented by its Branch Manager,
   No.90, CP Ramaswamy Street,
   CIT Colony, Alwarpet,
   Chennai 600 018.

3. M/s.Deekay Exports Limited,
   Represented by its Managing Director,
   No.219, Lal Bahadur Shastri Street,
   Puducherry 605 001. ..Respondents in both W.P.'s

PRAYER in W.P.No. 14122 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records and quash the Impugned Notice dated 03.03.2021 bearing Ref No.TIN

34590008723/2020-21 issued by the 1st Respondent to the 2nd Respondent.

PRAYER in W.P.No. 14125 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records and quash the Impugned Notice dated 30.06.2021 bearing Ref No.34590008723/71/CTO-IAC/2020-21/87 issued by the 1st Respondent to the 2nd Respondent on the grounds of being arbitrary and being in violation of Principles of Natural Justice.

For Petitioner in both W.P.'s	: Mr.N.Sasank Iyer for Mr.Anirudh Krishnan
For R1 in both W.P.'s	: Mr.J.Kumaran Additional Government Pleader Pondicherry
R2 & R3 in both W.P.'s	: No appearance

COMMON ORDER

There are two writ petitions, one challenging Form-U issued under Rule 34 whereby any sum that was due or may become due to the 3rd Respondent was directed to be paid forthwith to the 1st Respondent towards arrears of tax of Rs.18,68,32,625/-. The other writ petition is filed challenging the notice issued by the 1st Respondent to the 2nd Respondent dated 30.06.2021, whereby reference was made to Form-U dated 11.06.2021 and letter dated 21.06.2021 issued by the 2nd Respondent wherein it was stated that in view of insufficient funds to recover the taxes due from the 3rd Respondent, a lien was being created in respect of account No:12810200001032 for a sum of Rs.18,68,32,625/-.

2. It is submitted by the learned counsel for the petitioner that the impugned proceedings invoking Section 39 of the Puducherry Value Added Tax Act, 2007 (hereinafter referred to as "PVAT Act, 2007") which provides for various modes of recovery of money insofar it proceeds to attach the joint bank account and create a lien on the joint bank account is without jurisdiction. The joint bank account is held by the petitioner as well as the 3rd respondent, according to the petitioner, the money lying in the said account wholly belongs to the petitioner. It is submitted that the recovery which is permitted under Section 39 of the PVAT Act, 2007 is only to recover money from 3rd parties which is held on behalf of the dealer in default. Admittedly, the dealer in default is the 3rd Respondent and thus any proceedings invoking Section 39 of the PVAT Act, 2007 in respect of money which do not belong to the 3rd Respondent is in excess of the jurisdiction / power under Section 39 of the PVAT Act, 2007.

3. It was submitted by the learned counsel for the petitioner that the petitioner is a dealer in the industrial supply of fine quality liquors to Indian Market. The petitioner had entered into a contract/ manufacturing agreement with the 3rd respondent on 30.11.2015. In terms of the above agreement, the 3rd Respondent was responsible *inter-alia* for manufacturing, blending and bottling of Indian Made Foreign Liquor (IMFL) bottling unit located in Puducherry.

Importantly, Clause 19 of the agreement entered between the petitioner and the 3rd Respondent would make it clear that the 3rd Respondent was responsible for opening a bank account as required by the petitioner in the name and style of A/C GEPL. The bank account was opened for all transactions pertaining to GEPL brand and products as per the agreement and will be operated by two GEPL authorised representatives as nominated by GEPL on behalf of both the parties. Pursuant to the agreement, the petitioner and the 3rd Respondent opened a Joint Account in the name of D.K. Exports Limited Account GEPL bearing Account No.12810200001032 in Bank of Baroda, Alwarpet Branch. The account was meant to be used solely for the collection of the proceeds of the sales in terms of Clause 19 of the agreement entered between the petitioner and the 3rd Respondent. It is submitted by the learned counsel for the petitioner that though it is a Joint Account, the money that is lying in the said Joint Account in terms of the agreement after setting off the money due to the 3rd Respondent completely belongs to the petitioner. It was thus submitted that the entire proceeding invoking Section 39 of the PVAT Act, 2007 is without jurisdiction. It was also brought to the notice that the petitioner had submitted a representation *inter-alia* highlighting the fact that the entire amount remaining in the said joint account belongs to the petitioner in terms of the said agreement.

4. To the contrary, it was submitted by the learned counsel for the respondent by placing reliance on the counter that as on 11.06.2021, a sum of Rs.18.68 crores was due from the 3rd Respondent and thus a lien on the said account for Rs.18.68 Crores was created. It was also submitted that the representation by the petitioner would be disposed of after providing an opportunity of hearing to the petitioner and the 3rd Respondent.

5. Recording the same, the writ petitions are disposed of directing the 1st Respondent to dispose of the representation dated 25.06.2021 after giving an opportunity to the petitioner, 2nd Respondent, 3rd Respondent and any other interested parties. No costs. Consequently, connected miscellaneous petitions are closed.

23.11.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

Spp

To:
1.The Commercial Tax Officer - IAC Puducherry,
Commercial Taxes Department, Puducherry,
Commercial Tax Office,100 Feet Road, Ellaipillaichavadi,
Puducherry - 605005.

2.The Branch Manager,
Bank of Baroda,
No.90, CP Ramaswamy Street,
CIT Colony, Alwarpet,
Chennai 600 018.

<u>W.P. Nos.14122 and 14125 of 2021 and</u>
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23.11.2023