IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25289 of 2023
and
W.M.P.Nos.24707 and 24708 of 2023

M/s.Annai Builders Real Estates Private Limited,
Represented by its Managing Director,
Mr.T.Narayanan,
Alpha Centre, 4th Floor, No.150-151,
North Usman Road, Chennai – 600 017. ... Petitioner

Vs.

1.The Deputy State Tax Officer (FAC),
Office of the Commercial Tax Officer,
Arakkonam, Vellore District.

2.The Joint Registrar,
Office of the Joint Registrar Arakonam,
Arakonam, Thiruvallur District.

3.M/s.Dennis Steels Private Limited,
Represented by its Managing Director,
No.134/1, Valavanadu, Kalavoor Post,
Alapuzha – 688 001. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent, in his proceedings Rc.A3/1601/2015 dated 16.03.2017, to 2nd respondent which was made public only on 28.10.2022 by 2nd respondent, and quash the same and consequentially direct the 2nd respondent to remove the encumbrance created pursuance to the impugned notice and direct the 1st Respondent to consider the representation dated 13.02.2023 issued by the Petitioner herein and thus render justice.

For Petitioner	: Ms.Jayanthi K Shah
For R1	: Mr.M.Venkateswaran, Special Government Pleader (Taxes)
For R2	: Mr.E.Sundaram, Government Advocate

ORDER

The order passed by the 2nd respondent in proceedings dated 16.03.2017 is sought to be quashed in the present writ petition. Consequential directions are sought for to remove the encumbrance created pursuant to the notice and direct the 1st respondent to consider the representation dated 13.02.2023.

2. The petitioner / M/s.Annai Builders Real Estates Private Limited states that they are the power holder and owner of the property. The petitioner Real Estate Company entered into an agreement of sale with the owner of the property. Admittedly, the subject properties were attached by the Department of Sales Tax under the provisions of the Act. Since an encumbrance was created, the petitioner Real Estate Company is unable to deal with the property. Thus, the petitioner is constrained to move the present writ petition in their capacity as the power agent of the land owner.

3. During the earlier hearing this Court found that authorities of the Sale Tax Department has given certain oral instructions to lift the attachment in a suspicious manner, more so, favouring the petitioner Real Estate Company. Since there was an apparent illegality, this Court directed the Commissioner of Commercial Taxes to file an affidavit. The Commissioner of Commercial Taxes filed an affidavit stating as follows:

> *"2) On detailed enquiry and after examining the facts of the cases it is found that, the Deputy Commissioner (ST) and State Tax Officer had committed the following lapses:*
>
> - *The State Tax Officer's decision to lift*

the encumbrance for part of the land viz 83.27 Acres out of total 555 Acres is wrong, which is confirmed by her actions that, she has taken two different stand within a period of two different stand within a period of two or three months, one not to lift encumbrance for part of the land on 27.03.2023 and one to lift the encumbrance for part of the land on 22.06.2023.

- *Further, the State Tax Officer should not have followed any oral directions of the Deputy Commissioner, rather, she is obliged to have sought written directions.*
- *The Deputy Commissioner, though stated that, he has given oral suggestions to the doubts raised by the State Tax Officer regarding the lifting of encumbrance for part of land attached, he has failed to stop the wrong lifting of encumbrance by the State Tax Officer, even though it came to his knowledge rather facilitated this wrong action.*

3) In view of the above, I propose to initiate Disciplinary Action under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955 against both officers for the above said lapses."

4. In view of the above affidavit, the Commercial Tax is directed to initiate departmental disciplinary proceedings against the officials considered. As far as the relief sought for in the present writ petition is concerned, the petitioner is no way connected with the sales tax dues and the assessee has to approach the department for the purpose of clearing the dues and to lift the attachment for the purpose of removing the encumbrance.

5. In view of the facts and circumstances, the assessee / 3rd respondent is at liberty to approach the department for the purpose of clearing the Sale Tax arrears and lift the attachment in the manner contemplated under the provisions of the Act.

6. With these observations, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.09.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

1.The Deputy State Tax Officer (FAC),
Office of the Commercial Tax Officer,
Arakkonam, Vellore District.

2.The Joint Registrar,
Office of the Joint Registrar Arakonam,
Arakonam, Thiruvallur District.

S.M.SUBRAMANIAM, J.

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