IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.418 of 2023

M/s.Everwin Clothing Pvt Ltd,
Represented by its Director,
Tmt.P.Jeevarekha W/o.K.Periasamy,
4/12, Chithappa Avenue,
Rayapuram Main Road,
Tirupur-601 601. ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Tirupur Central II Circle,
Tirupur.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.

3.The Sub-Registrar,
Pollachi. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings of the 1st respondent in Ref.No.A3/611/2020 dated 31.10.2022 and the subsequent proceedings in Ref No.A3/611/2020, 01.11.2022 and

consequently direct the 1st respondent to withdraw the attachment proceedings in Ref.No.60/2012/A3 dated 05.05.2016 and Ref.No.1787/2017/A3 dated 24.10.2017 addressed to the 3rd respondent.
(Prayer amended as per order dated 06.11.2023 in W.M.P.No.31429 of 2023 in W.P.No.418 of 2023 by KRJ)

For Petitioner : Mr.S.Raveekumar
For Respondents : Mr.C.Harsha Raj
Additional Government Pleader (T)
[For R1 & R2]
: Mr.S.Ravikumar
Special Government Pleader [For R3]

ORDER

This writ petition has been filed seeking to quash the proceedings dated 31.10.2022 issued by the 1st respondent and the subsequent proceedings dated 01.11.2022 and consequently direct the 1st respondent to withdraw the attachment proceedings dated 05.05.2016 and 24.10.2017 addressed to the 3rd respondent.

2. Mr.S.Raveekumar, learned Counsel for the petitioner would submit that M/s.Everwin Textile Mills Pvt.Ltd., is liable to pay a sum of Rs.15,35,016/- towards the outstanding Value Added Tax amount. However, he pointed out that a scheme of compromise and arrangement was approved by the Committee of Creditors (CoC) which also came to be approved by the

NCLAT, whereby the liability of M/s.Everwin Textile Mills Pvt Limited was reduced to a sum of Rs.15,00,000/- and the same was also paid by them.

3. However, the learned Counsel for the respondent would submit that an appeal has been preferred against the approval of the scheme filed by the CIRP before the NCLAT and the entire amount has been paid.

4. The case of the petitioner is that for the liabilities of the M/s.Everwin Textile Mills Pvt.Ltd., the respondent has initiated recovery proceedings against M/s.Everwin Clothing Pvt.Ltd. Both the companies have stated as separate legal entity registered under the Companies Act, 1956. Therefore, the liabilities of one company cannot be fastened and recovered from another company. In the present case, the Director of both the company is one and the same. Even though the shareholders and the Directors are one and the same, the respondent cannot proceed with the recovery of the liability of one company from another company.

4.1 In the event of any liquidation of the company, where there is a tax liabilities, if the amount is not sufficient to settle the dues, in which case, the respondent shall proceed in accordance with Section 37 of the Value Added Tax Act, 2006. In the present case, admittedly, the liabilities as determined by the CoC and approved by the NCLAT is Rs.15,00,000/- and the same has also been paid. Therefore, attachment proceedings initiated for attaching the property of the petitioner cannot be sustained and the same is liable to be set aside.

Accordingly, the Writ Petition stands disposed of. No costs.

27.11.2023

veda
Internet:Yes
Index : Yes / No
Speaking order/Non-Speaking order
Neutral Citation : Yes / No

KRISHNAN RAMASAMY, J.

veda

To

1.The Assistant Commissioner (ST),
Tirupur Central II Circle,
Tirupur.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.

3.The Sub-Registrar,
Pollachi.

W.P.No.418 of 2023

27.11.2023
(2/2)