BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.17356 of 2023
and
W.M.P(MD)Nos.14548 & 14549 of 2023

R.Rajeswari ... Petitioner

Vs.

1.The Recovery Officer,
Employees State Insurance Corporation,
Sub Regional Office,
No.39/57, Three Roads,
Theerthamalai Vaniga Valagam,
Salem-636 007.

2.The Branch Manager,
M/s.Bank of Baroda,
No.46, Chinnakkadai Street,
Trichy-620 002. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned prohibitory order, dated 11.07.2023 in No. Slm/RECY/CP4(PO)/63-51-085113-001-1002 issued by the first respondent read along with the impugned communication, dated 13.07.2023 of the second respondent, quash the same as illegal.

For Petitioner : Mr.B.Prasanna Vinoth

For R-1 : Mr.C.Karthick
Standing Counsel

ORDER

The present writ petition is for a Writ of Certiorari, calling for the records relating to the impugned prohibitory order, dated 11.07.2023 in No. Slm/RECY/CP4(PO)/63-51-085113-001-1002 issued by the first respondent read along with the impugned communication, dated 13.07.2023 of the second respondent, quash the same as illegal.

2. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. The petitioner is the Sole Proprietor of 'Rathna Wide Range Trade', a proprietary concern established in the year 2017. The petitioner's proprietary concern had opened the current bank account with the second respondent in A/c.No.05390200000653. One Rathna Store Private Limited was originally running a Trade Corporation in the said premises and the petitioner's husband,

namely, S.Ravishankar was one of the Director in the said private limited. The Rathna Store Private Limited has gone under liquidation right now and the same is pending before the National Company Laws Tribunal and the petitioner has nothing to do with the said issue. The petitioner had never been a partner or a shareholder in the said Rathna Store Private Limited. While being so, the first respondent Corporation issued a summon under Rule 83 of the Schedule II of the Income Tax Act, 1961, dated 21.03.2023, requiring the petitioner to appear before them on 07.06.2023 at about 12.15 pm relating to the matter pertaining to Rathna Store Private Limited. Hence, the petitioner immediately engaged the Counsel, namely, Mr.Sanjay Kumar on 01.06.2023 and gave all the necessary documents facilitating him to represent the case of the petitioner before the first respondent Corporation. Un-expectedly due to the ill-health of the said Counsel, he was not able to appear before the first respondent Corporation and submit the details of the petitioner.

4. However, the petitioner genuinely believed that the summon, dated 21.03.2023, was dropped accepting the petitioner's proprietorship firm documents, since the petitioner's proprietorship firm has nothing to do with the Rathna Store Private Limited. But to the shock of the petitioner on 01.07.2023,

the petitioner further received a demand notice, dated 26.06.2023, from the first respondent in which it was asked why action for default of an amount of Rs.81,09,288/- with further interest and cost from 25.03.2023 up to the date of realization towards the arrears of contribution payable under ESI Act, 1948 should not be recovered from the petitioner. It was also stated that the petitioner had taken over the old establishment from the previous owners as per Section 93(A) of the ESI Act, 1948 and the liability of the establishment has also been transferred in favour of the petitioner and hence, the petitioner is liable to pay the arrears of Rathna Store Private Limited.

5. Having nothing to do with the Rathna Store Private Limited and Rathna Wide Range Trade being a separate entity belonging to the petitioner, the petitioner was making arrangements to reply to the first respondent notice, dated 26.06.2023. The first respondent further passed a Prohibitory Order under Rule 26 (i) of the Schedule II of the Income Tax Act, 1961, dated 11.07.2023 and the same was addressed to the second respondent and a copy marked to the petitioner. Immediately, the petitioner challenging the said Prohibitory Order, has filed this writ petition.

6. The learned Counsel for the petitioner vehemently submitted that Rathna Wide Range Trade is a separate proprietorship entity belonging to the petitioner and this particular Rathna Wide Range Trade has nothing to do with Rathna Store Private Limited and though he has made arrangements with an Advocate to appear before the first respondent and explain the details along with the supporting documents, un-expectedly that exercise was not done because of the ill-health of the petitioner's Counsel and in the meanwhile in a hurry, the first respondent has passed Prohibitory Order which is *per se* illegal and hence, the same has to be quashed and this writ petition has to be allowed.

7. Per contra, the learned Standing Counsel for the first respondent vehemently submitted that the learned Counsel for the petitioner's submission is not correct and is not acceptable and certainly Rathna Store Private Limited is a part and parcel of the Rathna Wide Range Trade and hence, both are functioning in the same building and they were given with appropriate opportunity to appear before the Corporation, which was not utilised by them and now at the verge of passing of this Prohibitory Order, they are not entitled to repudiate with the same.

8. However, the learned Counsel for the petitioner fairly submitted that he is always ready to produce all the doucments to prove that both the Rathna Store Private Limited and Rathna Wide Range Trade are separate entities and are not connected with each other and he should be given with an opportunity to submit the necessary documents before Bank and moreover, the account which has been freezed, subsequent to the passage of the Prohibitory Order is the main account for the business transactions, whatever pertaining to Rathna Wide Range Trade and if the same remains freezed, that will cause irreperable loss and injury to the business of the petitioner and hence, that has to be de-freezed.

9. However, considering the submission of the petitioner that both the entities are different and Rathna Store Private Limited has nothing to do with Rathna Wide Range Trade. This Court is of the considered view that the petitioner should be given with an opportunity and his inability to appear before the Corporation when the summons was issued at the first instance was not at his mistake but because of the inability of his Advocate and hence, this Court is inclined to quash the impugned Prohibitory Order, dated 11.07.2023 issued by the first respondent along with the communication, dated 13.07.2013

of the second respondent and thereafter, direct the petitioner to submit all the necessary documents substantiating his claim that his concern has nothing to do with the Rathna Store Private Limited within a period of one (1) week and the first respondent is also directed to consider and pass appropriate fresh orders in accordance with law. However, this Court makes it clear that this order has been passed without going into the merits of the case.

10. This writ petition stands disposed of, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

20.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

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L.VICTORIA GOWRI, J.

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