BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.18172 of 2023
and
W.M.P(MD)No.15159 of 2023

A.Rangasamy Engineers Private Limited,
Represented by its Managing Director,
R. Gangadharan Raja. ... Petitioner

Vs.

1. The Assistant Commissioner,
The Assessment Unit,
Income Tax Department,
Corporate Ward-I, Madurai.

2. The Deputy Commissioner of Income Tax,
The Assessment Unit,
Income Tax Department,
Corporate Ward-I, Madurai. ... 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 order in DIN. ITBA/AST/S/143 (3)/2022-23/1048181545 (1), dated 22.12.2022 passed U/s. 143 (3) r.w.s. 144B of the Income Tax Act in PAN. AAECA7041A by the 1st respondent for the assessment year 2021-2022 along with the demand notice ITBA/AST/S/156/ 2022- 23 / 1048181653 (1) dated 22.12.2022 consequential notice issued in DIN.

ITBA/RCV/F/17/2023-24/1053711063 (1), dated 14.06.2023 and quash the same as illegal.

For Petitioner : Mr.M.Sricharan Rangarajan, Senior Counsel, for M/s.T.Sathya Selvi

For Respondents : Mr.N.Dilip Kumar Standing Counsel

ORDER

This writ petition has been filed for ***Writ of Certiorari*** challenging the impugned Assessment order, for the Assessment year 2021-2022.

2. Heard Mr.M.Sricharan Rangarajan, Senior Counsel, for M/s.T.Sathya Selvi appearing for the petitioner and Mr.N.Dilip Kumar, Standing Counsel appearing for the respondents. Perused the material documents available on record.

3. The brief facts of the case are that the petitioner is engaged in trading of all sorts of waste materials especially old newspaper, old craft paper, box records scarp materials etc. No brokers are engaged, the petitioner connect the existing suppliers to the needy customer, hence no storage of materials but the transaction is end to end. The petitioner filed IT Returns on 30.12.2021 wherein the petitioner has set off carried forward business loss pertaining to AY

2017-2018 and has declared NIL return. The return was taken for scrutiny for the Assessment Year 2021-2022 and the respondent issued notice under Section 142(1) on 05.08.2022 and directed to furnish regarding the purchase transaction. Again, notice dated 16.11.2022 was issued followed by SCN dated 02.12.2022.

4. The contention of the petitioner is that he has submitted four replies on different dates thereby proper explanation was submitted, but the respondent was not satisfied and issued the assessment order. Inspite of documentary evidence, monthly GSTR-1 & GSTR-3B filed before GST authorities the respondents state the transaction as doubtful transaction. Infact the evidence are available in portal for which the respondents have access to the information about the company's monthly sales, annual sales, the input tax availed pertained to its purchases in GST returns filed by the suppliers by declaring their sales made to the petitioner.

5. The respondents claim that the sellers from whom the purchase made were not filed their income tax returns and hence the respondents claim it as doubtful transaction. Even though the petitioner submitted the details of the name of party, their PAN number and other details, the respondents are stating the petitioner has not submitted the supporting documents such as transport bill, contract agreement stock register, income tax returns, bank statement of the seller and purchaser. Especially the respondents doubt the six transactions wherein there was discrepancy in vehicle number and the petitioner has submitted explanation that it was inadvertent. The respondents negatived the claim and stated that the petitioner has not placed stock register, income tax returns of other parties which the petitioner has no access, thereby the respondents have fixed responsibility on the petitioner to prove seller's return and other particulars of the seller. However, without accepting the explanation the respondents have passed an assessment order dated 22.12.2022, aggrieved over the petitioner had preferred statutory appeal. In the meanwhile, the petitioner has received a demand notice dated 14.06.2023 to pay 25% of the assessed amount i.e., a sum of Rs.4,47,36,896. Challenging the assessment order and the demand notice the writ petitioner is before this Court.

6. However, the respondents' objection is that the petitioner having preferred statutory appeal, cannot file writ petition for the same cause of action. Moreover, the petitioner ought to have filed stay application before the appellate authority, if the petitioner is seeking stay of the demand. Also, the petitioner has right to file a petition before the Assessing Officer to stay the demand. Without adverting to the aforesaid procedure, the present writ petition is not maintainable. This writ petition is preferred only for the sake of stay of demand. The petitioner ought to have filed stay application before the Appellate authority or petition before the Assessment officer. But the petitioner has not chosen to prefer any of these available remedies and has chosen to file this writ petition. Hence, this writ petition is not maintainable.

7. The respondents have relied on Judgment reported in ***[2021] 128 taxmann.com 107 (Madras)*** in the case of ***Queen Agencies Vs. Assistant Commissioner of Income Tax, (Circle-1).*** The relevant portion is extracted hereunder:

....

> *"14.It is needless to say that the petition under Section 220(6) of the Act will have to be filed only before the assessing officer after filing the statutory appeal. The learned standing counsel claim that at present the assessees are indiscriminately filing the stay petitions. They move the appellate authority, the assessing officer and also the Principal Commissioner of Income Tax simultaneously. The Principal Commissioner of Income Tax is only the reviewing authority. It is only when the assessing officer makes a reference or if the assessee is aggrieved by the order passed by the assessing officer, by virtue of Circular dated 29.02.2016, the Principal Commissioner of Income Tax will get the jurisdiction to exercise his power under Section 220(6) of the Act and not otherwise. In other words, he cannot assume the jurisdiction in the first instance. The assessees must also ensure that the petition filed under Section 220(6) of the Act contain all the relevant particulars so that the assessing officer can pass an appropriate order by bearing in mind the trinity principles. The order passed by the assessing officer will hold good*

and will have to give away as and when the appellate authority passes an order on the stay petition filed by the assessee/appellant.

15.In the light of the aforesaid discussion, the order impugned in the writ petition is set aside and the matter is remitted to the file of the assessing officer to pass orders afresh in accordance with law. The petitioner is at liberty to file a supplementary petition containing additional particulars and contentions. The assessing officer is obliged to consider all the contentions that may be raised by the petitioner while passing order under Section 220(6) of the Act. All the contentions of the petitioner are left open. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed."

8. After hearing the rival submission this Court has given its anxious consideration. Even though, prima facie this Court is of the considered opinion that the petitioner is not liable to submit any evidence to prove the seller's return and other particulars of the seller, this Court is not inclined to pass order on merits, when the statutory appeal is pending. However, the question remains is whether the petitioner is liable to pay 25% of the demand. Since prima facie this Court is of the opinion the petitioner is not liable, consequently the petitioner is not liable to pay the 25% demand, more so when the statutory appeal is pending before the appellate authority. However, it is made clear that only for the limited extent to decide the payment of 25% demand, this Court is of the considered opinion that the petitioner is not liable to submit seller's stock register. The appellate authority shall consider the issue on its own merits, uninfluenced by the observation of this order.

9. Therefore, this Court is inclined to grant stay of the demand notice alone. It is made clear that it will not affect the rights of the petitioner as well as the department to consider the issue on own merits. The appeal shall be considered within a period of six months from the date of receipt of a copy of the order.

10. Further it is made clear that this order shall not precedent, since it is only for the present facts and circumstances of this case.

11. With the above observations and directions, this Writ Petition is allowed in above terms. No Costs. Consequently, connected miscellaneous petition is closed.

27.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To
1. The Assistant Commissioner,
The Assessment Unit,
Income Tax Department,
Corporate Ward-I, Madurai.
2. The Deputy Commissioner of Income Tax,
The Assessment Unit,
Income Tax Department,
Corporate Ward-I, Madurai.

S.SRIMATHY, J.

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