(2007) 07 MAD CK 0292

In the Madras High Court

Case No : Writ Petition No. 23025 of 2007 and M.P. No. 1 of 2007

Indo Germa Products Limited APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 11-07-2007

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 26

Citation : (2009) 24 VST 342

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : R. Sivaraman, for the Appellant; Haja Nazirudeen, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—The petitioner has sought a writ of certiorarified mandamus to quash the order dated June 27, 2007 and consequently, direct the respondent to lift the bank attachment.

2. The petitioner is carrying on a business in rolling shutters and registered under the Companies Act, 1956. They are assessed to sales tax both under the Tamil Nadu General Sales Tax Act, 1959 in TNGST No. 0620259 and Central Sales Tax Act, 1956 in CST. No. 32178/November 1, 1994. It is the case of the petitioner that they are regularly submitting their returns and paying taxes from the date of inception of the company. They further submitted that there is no dispute with regard to turnovers and taxes, to be paid as per A1 return filed by them. It is also the case of the petitioner that due to heavy setback in the business, the petitioner-company faced severe financial crises from the year 2000 onwards and they are liable to pay tax for the assessment years 2004-05, 2005-06 and 2006-07, which are detailed hereunder:

--- Years TNGST Act CST Act Total --- 2004-05

1,13,355 1,78,710 2,92,065 -- 2005-06 1,16,290 6,54,490 7,70,780 -- 2006-07 4,16,011 3,54,458 7,70,469 -- 6,45,656 11,87,658 18,33,314 --

3. The petitioner has further submitted that only for the past two years, they were able to revive the payments to the Sales Tax Department and also repaid IFST loans, availed of by them long back. In view of the financial position, the petitioner has requested the respondent to grant some more time for payment of tax. But the respondent has failed to consider the request made by the petitioner and issued the impugned letter dated June 27, 2006 to petitioner''s bankers, viz., the State Bank of India, Thiruvottiyur Branch and attached the bank account of the petitioner-company, thereby making the business of the company crippled. The petitioner has further submitted that on receipt of the said letter from the respondent, the State Bank of India, by their letter dated June 28, 2007, has informed the petitioner that the respondent, by issuing form B-6, attached the entire bank accounts. To prove their bona fide, the petitioner had offered Rs. 2,00,000 towards arrears of tax and also tendered a cheque in favour of the Commercial Tax Officer, Mount Road, Chennai and requested the respondent to lift the attachment and allow the petitioner-company to carry on their business. Again, the request of the petitioner has not been considered and therefore, the petitioner is constrained to approach this Court for appropriate relief.

4. The learned Counsel for the petitioner submitted that the petitioner requires some breathing time to pay the entire tax arrears. He further submitted that the company was facing severe financial constraint for the last few years and at this stage, if the attachment of bank accounts is not lifted, the reputation of the company would be at stake and the company may not be in a position to survive. Under such circumstances, he prayed for suitable directions to the respondent to lift the bank attachment, so as to enable the company to operate the bank account and discharge the entire arrears of tax by the end of this month.

5. The respondent has filed a detailed counter-affidavit and submitted that the writ petition is filed against the notice issued u/s 26 of the TNGST Act, 1959 for collection of admitted tax from the monthly returns filed by the petitioner-company for the assessment years 2004-05, 2005-06 and 2006-07. They further submitted that the petitioner-company has effected sales both within and outside the State of Tamil Nadu and as per the returns submitted by them, the company is liable to pay the admitted tax as stated supra. It is further submitted that the notices have been issued regularly to the company for payment of admitted tax, as detailed here-under:

-- Admitted tax due Date of issue of notice Date of service of notice -- Rs.

8,98,905 23-03-2005 25-03-2005
-- Rs.
7,51,574 28-06-2005 8-07-2005
-- Rs.
12,02,466 8-09-2005 8-09-2005
-- Rs.
13,92,041 29-08-2006 29-08-2006
-- Rs.
9,18,710 15-02-2007 17-02-2007
-- Rs.
18,33,314 12-03-2007 16-03-2007
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6. It is the case of the respondent that earlier, the petitioner had approached the Commissioner of Commercial Taxes for payment of dues in six monthly instalments, but their request was not considered by the Commissioner of Commercial Taxes in Lr. Re. No. Q1/58428/2006, dated October 31, 2006. In spite of several notices directing the company to pay the admitted tax due, as per the monthly returns filed by them, the petitioner has failed to pay the arrears of tax and therefore, the respondent has exercised the powers u/s 26 of the TNGST Act and issued notice to the bankers, viz., State Bank of Travancore, for recovery of the taxes due, marking a copy to the petitioner. On receipt of the notice, the said banker has sent a pay order for Rs. 7,878.99, which was the only available credit in the petitioner''s account. In the meantime, the petitioner-company have shifted their registered office at No. 100-A, Basin Road, Tiruvottiyur, Chennai, to some other place. Coming to know that the petitioner is operating another bank account and running the company, on instructions, a team of officials went to that business place on June 27, 2007, with regard to the collection of taxes due and insisted the petitioner to pay the arrears of tax. Since the petitioner-company has not paid any amount, the respondent has issued another notice to the bankers, viz., the State Bank of India, Tiruvottiyur, on the same day u/s 26 of the TNGST Act for collection of tax amount due from the petitioner and the copy was also marked to the petitioner. On receipt of the notice, the State Bank of India, Tiruvottiyur, has sent a demand draft for Rs. 37,508.71, which was the only amount available in petitioner''s account.

7. The respondent has further submitted that the cheques issued by the petitioner towards arrears of tax have been dishonoured on many occasions and there is no bona fide in the offer made by it. The details of the cheques given by the petitioner and dishonoured subsequently are given below:

--- Cheque No. &
Date Amount Date of dishonour

024923/20-05-2004 Rs. 1,84,454 01-07-2004

024974/20-07-2004	Rs.	1,16,666	10-08-2004
029715/20-08-2004	Rs.	74,246	17-11-2004
029753/11-10-2004	Rs.	54,882	24-11-2004
029761/29-10-2004	Rs.	6,20	24-11-2004
029762/29-10-2004	Rs.	37,461	24-11-2004
044199/12-11-2005	Rs.	1,15,604	06-12-2005
044198/05-11-2005	Rs.	62,765	06-12-2005
159258/27-01-2006	Rs.	80,939	13-02-2006
024004/27-01-2006	Rs.	29,148.75	13-02-2006
159259/27-01-2006	Rs.	85,892.12	13-02-2006
159292/05-10-2006	Rs.	1,58,753	13-02-2006
159291/05-10-2006	Rs.	45,924	13-02-2006

8. Mr. Haja Nazirudeen, learned Special Government Pleader appearing for the respondent, submitted that the petitioner-company had admitted the tax liability of Rs. 18,33,314 and they are in the habit of giving false promise with regard to payment of tax and in respect of notices issued earlier, they have not responded and made any substantial payment. He further submitted that for the past two years, the petitioner had been issuing cheques, which have been dishonoured and there is no bona fide on the part of the petitioner-company. Referring to Section 26 of the TNGST Act, he submitted that the impugned order of attachment against the petitioner is valid in law and in the absence of any illegality, the same has to be sustained.

9. It is evident from the details furnished in the counter-affidavit that the petitioner has defaulted payment both in TNGST Act and CST Act for the assessment years 2004-05, 2005-06 and 2006-07, amounting to Rs. 18,33,314, which is not disputed by the petitioner. Though notices issued from the month of March 2005 to March 2007 were acknowledged by the petitioner, payments have not been made to clear the arrears of tax. About 13 cheques have been given by the petitioner on various dates and all the cheques have been dishonoured by the bankers. Naturally, left with no other alternative, the respondent has taken recourse to Section 26 of the TNGST Act and issued notice to the petitioner''s banker, viz., the State Bank of India, Travancore, for recovery of tax dues. The

said bank has sent a pay order for Rs. 7,878.99 which was available in the credit of the petitioner''s account. The petitioner had shifted their registered office at No. 100-A, Basin Road, Tiruvottiyur, Chennai to some other place. No sooner the respondent came to know that the petitioner has been operating another bank account, viz., the State Bank of India, Tiruvottiyur, than it issued a notice u/s 26 of the TNGST Act to the above for attachment. Acknowledging the notice, the banker has sent a demand draft for Rs. 37,508.71, which was the outstanding amount available in the petitioner''s account. It is also evident that in spite of notices from the month of March 2005 to March 2007, the petitioner has not paid any substantial payment towards arrears of tax.

10. From the pleadings and the submissions made by the counsel appearing for both parties, it is evident that the petitioner has been evading the arrears of admitted tax to the Revenue and had been issuing cheques and deceived the Department. The petitioner-company, who has already collected tax from the dealers, are bound to remit the same to the Government promptly as per the provisions of the statute. During the course of hearing of this writ petition, the petitioner has offered to pay a portion of amount by way of cheque and prayed this Court to permit him to pay the entire arrears of tax by the end of July 2007. Considering the conduct of the petitioner, this Court cannot entertain the prayer of the petitioner for the simple reason that not even a single cheque of the petitioner has been honoured. The respondent has given a long rope to the petitioner from the years 2005 to 2007 to pay the admitted arrears of tax.

11. The cheque for Rs. 1,84,454 issued by the petitioner was dishonoured as early as on July 1, 2004 and that the petitioner should have realised their mistake and started paying the arrears of admitted tax to show their bona fide. Even thereafter, the petitioner had been continuously issuing cheques, ignoring the fact that prosecution can be launched against them under the provisions of the Negotiable Instruments Act. There is no bona fide on the part of the petitioner in fulfilling the statutory obligation.

12. In view of the above, the action taken by the respondent for realisation of the arrears of tax by attaching the bank accounts of the petitioner cannot be found fault with and there is no illegality. Equity cannot be extended to a person who has not only been evading to pay tax, but also issued cheques, knowing fully well that the same would be dishonoured. Moreover, in the pleadings, the petitioner has suppressed the details relating to the notices issued by the Department and also the cheques issued by them, which were subsequently dishonoured. I do not find that the petitioner has made out any case for invocation of the extraordinary jurisdiction of this Court, warranting interference.

13. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

