(2016) 03 AHC CK 0227

In the Allahabad High Court

Case No : Writ Tax No. 202 and 203 of 2016

M/S Total Building Solution — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Citation : (2016) 92 UPTC 277

Hon'ble Judges : Tarun Agarwala and Vinod Kumar Misra, JJ.

Bench : Division Bench

Advocate : Shubham Agrawal, Advocate, for the Petitioner; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

1. Since no disputed question of fact arises, the instant writ petition is being decided at the admission stage itself with the consent of the parties.

2. The petitioner has challenged the notice dated 11.1.2016 issued under Section 33(7) of the U.P. Value Added Tax Act (hereinafter referred to as the Act) by which the petitioner''s banker, namely, I.N.G. Vyas Bank, Noida has been directed to ensure that no amount is withdrawn by the petitioner as well as the order dated 22.2.2016 directing the purchaser of the petitioner to deposit a sum of Rs. 1.76 Crores within three days pursuant to the provisional assessment order.

3. We find that the provisional assessment order under Section 25 of the Act is dated 6.2.2016 which was served upon the petitioner on 8.2.2016. Under the Act no recovery proceeding can be initiated before the expiry of 30 days from the date of the service of notice of demand and the assessment order, which period has not as yet expired as on date. On the other hand, we find that prior to the issuance of the assessment order garnishee notices under Section 33(7) of the Act was issued on 11.1.2016 which, in our opinion, is wholly illegal and arbitrary. Such attachment of the petitioner''s bank account is wholly illegal.

4. In M/s Vinayak Traders, Sarai Aghat, Etah v. State of U.P. and others, 2010 (42) NTN DX 185 in similar circumstances the attachment notices issued under Section 33(7) of the Act before the expiry of the period was quashed. The said decision is wholly applicable in the instance case.

5. We also find that notices issued to the petitioner''s purchaser to deposit the amount again before the expiry of the period on 30 days was also illegal and consequently for the same reason the notices dated 22.2.2016 cannot be sustained.

6. For the reasons stated aforesaid, the notices dated 11.1.2016 and 22.2.2016 are quashed. The respondents are restrained from realising any amount prior to the expiry of 30 days as provided under Section 25(3) of the Act.

7. We find that the petitioner''s appeal along with stay application is pending consideration before the First Appellate Authority. We direct the First Appellate Authority to consider and decide the stay application of the petitioner within 10 days from today.

8. The writ petitions are allowed.