

AMIT RAWAL, J.

Dated this the 19th day of March, 2020

ORDER

1. This court, dealing the roster of tax have come across many cases involving filing of the appeals before statutory authorities and recovery of dues of income tax, Kerala Value Added Tax, General Sales Tax, recovery of tax on vehicles under the Kerala Motor Vehicles Taxation Act, 1976, the recovery of Property Tax under Kerala Building Tax Act, 1975, Municipal/Corporation Tax including notices issued under the provisions of Revenue Recovery Act, 1968 and proceedings under Section 194N of the Income Tax Act.

2. The entire world is facing the threat of CORONA virus named by World Health Organization as Covid-19 and pandemic. There have been a large number of cases in India, including in the State of Kerala, majority of detection is being reported in the newspapers and on news channels as well. Even the President of the Indian Medical Association, Kerala, Dr.Rajeev Jayadevan has issued

a write-up dated 16.03.2020 circulated on what'sapp explaining spread of virus when people gather in groups and armour to this is social distance.

3. People are requested to stay away from any potential source of virus and since Kerala has 42 lacs people over the age of 60 and 5.4 lacs over 80, with higher population density than the western nations, health crises of unprecedented proportions cannot be ruled out. Be that as it may, in all the High Courts, including this High Court, decision has been taken leaving open to the Judges to reduce the number of cases in order to prevent further spread of the aforementioned disease. But I found that handling of the files by the High Court staff as well as the Advocate General staff is done without proper precautions, as they are handled with bare hands instead of using protective measures like gloves etc.

4. In cases pertaining to Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, it is seen that the Advocate Commissioners appointed by the Chief

Judicial Magistrate, who is seized of the proceeding, initiated under Section 14 of the SARFAESI Act have been issuing notices to the defaulters/borrowers and guarantors for taking the possession of secured asset, or sale/auction of secured assets result thereof, many cases which are filed in this Court as well as in the Debt Recovery Tribunal. Though in certain cases the bank officials/through counsel are coming forward with a proposal of regularising the account but in many cases it is not so and the parties are relegated to avail the remedy under Section 17 of the SARFAESI Act. Similarly, in matters pertaining to Income Tax, in many cases after the passing of the assessment order are at the stage of first appeal or second appeal, despite filing of the interim applications, the recovery notices are being issued impelling the litigants to approach this court for issuance of direction to the authorities to take the application for interim stay out of turn as appeals are taken seniority-wise. On notices under section 194N of Income Tax Act introduced with effect from 1st September, 2019

mandating Banking Societies to deduct 2% of TDS in case of transaction above 1 Crore under proviso giving exemption to certain societies like clause (ii) of clause (b) of Section 194A, this court, two days back, passed a detailed interim order. Considering such situation, many writs involving same controversy are being filed daily.

5. Similar is the position in respect of the erstwhile regime of Kerala Value Added Tax Act, 2003. Even under the 2003 Act, notices under Section 25(1) and AA are being issued whereby the authorities have initiated action on the basis of escaped assessment. In many cases, the notices are prima facie time barred that is beyond 5 or probably 6 years as prescribed under Section 25 but despite proceedings are continuing resulting into filing of writs,
6. Matters pertaining to charging of tax on the stage carriages on the basis of floor area ratio or seating capacity, the issue has already been decided by this Court by fixing a cut off date

as 1.7.2017 are also rampantly filed as the authorities are still issuing notices.

7. Similarly the authorities assigned the duties to collect building tax have been issuing notices to the respective parties charging building tax sometimes with retrospective effects or against certain provisions of Statute and in this regard, litigants are also coming to this Court challenging the action.

8. I am of the view that this present scenario of outburst of deadly corona virus is very precarious and sensitive, as the lawyers and the staff rendering assistance to this Court and the Judges are vulnerable, thus in order to prevent such rampant of spread by taking preventive measures, I deem it appropriate to issue general directions to the departments concerned like the banks, financial institutions, Income tax authorities, authorities dealing with the erstwhile KVAT, GST, recovery of tax on motor vehicles and building tax to defer the recovery proceedings or coercive measures till 06.04.2020.

9. In order to overcome the apprehension that this general order may cause impediment or hindrance to persons who are willing to opt for the Amnesty Scheme, it is made clear that this order will not be an impediment for any of such defaulters to avail the Amnesty scheme as and when such scheme is promulgated or in vogue. It is also made clear that the borrowers of the bank, if want to pay off the dues of the bank, it will be open to them to abide by any of the RBI directives or any other directive which is likely to come into place de hors this order.

10. Similarly, defaulters of GST, KVAT, Building tax, Motor Vehicles tax etc. who are willing to pay the demanded amount subject to certain conditions which the department would have fixed within their power to relax or otherwise, would not be bound by this order.

11. However, liberty is granted to the departments to move appropriate application in a particular case warranting modification of the order, backed by reasonable justification. This direction will also be communicated to the Chief Judicial magistrates who are seized of the matters under Section 14 of the SARAFESI Act on behalf of the banks.

12. In cases wherein tax authorities are required to complete the assessment proceedings before 31.3.2020, they can be deferred subject to the order of this Court but it is made clear that the assesseees would not raise the objection of limitation.

13. In matters pertaining to seizure and detention of goods and vehicles under the provisions of Section 129 of the GST Act, 2017, many affected parties have been approaching this Court challenging the jurisdiction of the adjudicating authority for one reason or the other. Since the goods are to be released by furnishing Bank Guarantee including the penalty and the interest, if the party so desire, they can always move an application for release of the goods

by furnishing Bank Guarantees which shall not be encashed even if the adjudication proceedings are culminated such time the period specified for filing appeal under Section 107 has not lapsed.

14. The adjudicating authorities already seized of the proceedings and communicated for appearance on a particular date there is likelihood of the party may be handicapped in not approaching on a fixed date in view of the present situation. In such circumstance, the adjudicating authorities are directed not to pass any adverse order till 06.04.2020. This order is being passed in view of the fact that the number of cases being filed in this roster are increasing day by day, today it is more than 80. Persons having same cause of action need not file writ petitions till the recovery proceedings are kept in abeyance.

15. The Registry is directed to list all the matters pending in this regard batch-wise post 06.04.2020.

16. Let this order be communicated to the concerned departments, including the banks for compliance and implementation.

This direction is to be communicated also to the Central Board of Direct Taxes and Customs for implementation and compliance.

Sd/-

Amit Rawal, Judge

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