



submit its reply, as against the issuance of recovery citation under Section 280 to be read with Rule 236 of the U.P.Z.A. & L.R. Act, in order to have their say with regard to the propriety of the recovery sought to be made pertaining to the Assessment Year 2016-17.

4. The learned counsel for the petitioner has contended in the writ petition; that as against the tax due to be paid and assessed to be paid by the petitioner-company for the said financial year, they had a remedy before the Appellate Authority under Section 51 of the Uttarakhand VAT Act and according to their pleadings raised in the writ petition, as against the assessment order and the rectification of the assessment order made by the orders dated 17.08.2020 and 15.10.2020, the petitioner-company had already preferred an Appeal on 04.12.2020, which is duly supported with the Stay Application and the same is pending consideration before the Appellate Authority and it could not be considered on account of the prevailing pandemic situation.

5. The petitioner-company is apprehending that on account of non-consideration of the pending Stay Application, which was preferred by them with an Appeal under Section 51 of the Act, the respondents may proceed on the basis of the impugned Notice dated 26.07.2021, and are likely to attach the bank accounts of the petitioner-company for the recovery of the tax amount, which was assessed due to be paid by them for the year 2016-17.

6. The learned Addl. CSC for the State had raised an objection to the effect that for the purposes of entertaining of an Appeal under Section 57 of the Act, there are certain embargoes, which are imposed by sub Section (7) of Section 51 of the Act. His argument, at this stage, would not be sustainable in a writ jurisdiction under Article 226 of the Constitution of India, for the reason being that the Appeal itself and the Stay Application, which has been filed in support thereto, is yet to be considered by the competent Appellate Authority on merits,

hence, at this stage this Court need not to venture into the argument as extended by the learned Addl. CSC for the State under Section 51(7) of the Act, and its implication, because it may affect independent adjudication of Appeal and stay application filed in support thereto .

7. Be that as it may. At this situation, looking to the reliefs, which have already been extracted above, this writ petition would stand disposed of with the following directions:-

1. As far as the Notice dated 26.07.2021 is concerned, since it was only a notice of appearance given to the petitioner-company, to appear before the Tehsildar in order to submit their objection or reply to the Notice for recovery, the petitioner is granted 10 days' time from the date of receipt of the certified copy of this order, to approach before respondent No. 4 through any designated authority of theirs, in order to file a reply to the said Notice, and for a period of 10 days of filing of an objection before the Tehsildar i.e. respondent No. 4 herein, no coercive measures as against the said Notice would be taken against the petitioner-company and the objection would be decided by respondent No. 4, on its merits.

2. In para 43 of the writ petition, the petitioner-company has specifically pleaded that initially the Appellate Authority was with the respondent No. 3 at Haldwani, before whom the petitioner-company had preferred an Appeal, under Section 57 of the Uttarakhand VAT Act, along with the Stay Application, which was pending consideration. But subsequently, the appellate power has now been conferred upon the Additional Commissioner, Appeals, Commercial Tax, Dehradun, as such it may takes some time, for the records of the Appeal, which had been preferred before respondent No. 3 at Haldwani, to be transferred to respondent No. 2 for consideration of the Appeal as well as the Stay Application, which has been preferred by the petitioner-company.

3. In order to meet this peculiar contingencies, the respondent No. 3 is directed that in case if his appellate jurisdiction has now been conferred with respondent No. 2, he would ensure to remit the records of the Appeal expeditiously before respondent No. 2, within the aforesaid period of 10 days.

4. As soon as the records of the Appeal, preferred by the petitioner-company under Section 51 of the Act at Haldwani, is transferred by respondent No. 3 to respondent No. 2, the respondent No. 2 is requested to consider the Stay Application of the petitioner under Section 51 of the Act, within a period of one month thereafter and pass an appropriate order on the same exclusively in accordance with law.

8. Subject to above observations, the writ petition stands disposed of.

(Sharad Kumar Sharma, J.)

09.08.2021