IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 14351 OF 2015
and
M.P. No. 1 of 2015

M/s. Pioneer Wincon Private Limited
rep.by its Executive Director
30/1A, Abdul Razaq, 1st Street,
Saidapet, Chennai - 600 015. ... Petitioner

Vs

1. Union of India
rep. by its Secretary
Ministry of Finance
Department of Revenue
New Delhi.

2. The Central Board of Excise & Customs
North Block,
New Delhi.

3. The Commissioner of Service Tax-II
"Newry Towers" No.2054-I
Second Avenue, 12th Main Road
Anna Nagar
Chennai - 600 040.

4. The Commissioner of Commercial Taxes
100 Feet Road, Ellapillaichavady
Puducherry - 605 005. ... Respondents

PRAYER: This Writ Petition has been filed under section 226 of the Constitution of India, to issue an order of Writ of Certiorari, calling for the records relating to the order passed by the third respondent in Order-in-Original No. CHN-SVTAX-002-COM-01-2014-15 dated 27.02.2015, quash the same and pass further orders.

For petitioner : Mr. Raghavan Ramabadran

For Respondents: Mr. V. Sundareswaran
Senior Panel Counsel for R1 to R3

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O R D E R

This Writ Petition has been filed against the impugned order passed by the third respondent in Order-in-Original No. CHN-SVTAX-002-COM-01-2014-15 dated 27.02.2015, which is appeal-able under Section 51 of the TN VAT Act 2006.

2. Learned counsel appearing for the petitioner assailing the impugned order, took a plea that the third respondent, the Commissioner of Service Tax-II, has no jurisdiction to pass the impugned Order-in-Original No. CHN-SVTAX-002-COM-01-2014-15 dated 27.02.2015. In support of his submission he has also placed on record the judgment of the Hon'ble Apex Court in the case of Bharat Sanchar Nigam Ltd., vs. Union of India, reported in 2006 (2) STR 161 (SC), to say that the competency of the States to levy sales tax on telecommunication service has been accepted by the Hon'ble Apex Court, as violation of Article 14, by entertaining a writ petition filed under Article 32, therefore, there is no impediment for the petitioner to file a petition under Article 226 as the third respondent has no jurisdiction to pass the impugned order.

3. It is at this point of time, Mr. V. Sundareswaran, learned Senior Panel Counsel, representing the respondents 1 to 3, urging this Court to dismiss the writ petition, submitted that when the petitioner had already filed an appeal against a similar order passed during the previous period, which is pending, this Writ Petition is not maintainable as it leads to multiplicity of proceedings, apart from wasting the precious time of this Court and leading to inconsistent order.

4. This Court finds merit on the submission made by learned counsel for the respondents. As the petitioner admittedly had filed an appeal before the Court earlier challenging the correctness of the previous assessment order, this Court is not inclined to entertain this writ petition.

5. Therefore, the writ petition fails and the same is dismissed. However, the petitioner is at liberty to approach the Appellate Authority. It is needless to mention that in the event of filing such an appeal, the observation made by this Court will not have any bearing on the merits of the appeal. Consequently, the connected miscellaneous petition is closed. No order as to costs.

avr

s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar

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To

1. The Secretary
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   Ministry of Finance
   Department of Revenue
   New Delhi.

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   100 Feet Road, Ellapillaichavady
   Puducherry - 605 005.

+ 1 cc to M/s.V.Sundareswaran, Advocate SR 25807

+ 1 cc to M/s.Lakshmi Kumaran, Advoate SR 25806

mp(co)
prk9/6

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