IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.16508/2015
MP.No.1/2015

B.S.Silver Emporium represented by its
Proprietor Nirmal Kumar S.Bohra,
Chennai-79 ... Petitioner

Vs

1.The Assistant Commissioner (CT)
Peddunaickanpet Assessment Circle, Chennai-1

2.N.V.Kamalesh Kumar ... Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for records in TIN:33880282605/2014-2015, dated 01.06.2015, on the file of the 1st Respondent and quash the same.

For Petitioner : Mr.A.Thiagarajan, SC for
Mr.S.Ramesh Kumar

For Respondent : Mr.Manoharan Sundaram, AGP-R1
Mr.V.Raghavachari-R2

ORDER

This Writ Petition is filed to issue a Writ of Certiorari, calling for records in TIN:33880282605/2014-2015, dated 01.06.2015, on the file of the 1st Respondent and quash the same.

2. The case of the Petitioner is as follows:-

a. The Petitioner is carrying on the business in silver ornaments and registered under the Tamil Nadu Value Added Tax Act, 2006 having TIN 33880282605 and the CST Act having CST 921601. The Petitioner is carrying on the said business in the property belonged to a Mutt and the 2nd

Respondent got the property on land rent. The wife of the Petitioner entered into a lease agreement with the 2nd Respondent and as per the said agreement, the wife of the Petitioner had to pay a sum of Rs.5 lakhs towards the cost of the construction and payments were made in terms of the agreement. The construction was completed and the superstructure was leased out to the Petitioner. It was agreed that 50% of the right in the undivided share was given to the lessee as shown in the schedule. Therefore, the superstructure belonged to the wife of the Petitioner. The 2nd Respondent continuously insisting the Petitioner to make him as a working partner and pay 2% out of the profit to him, which the Petitioner refused. While so, the 1st Respondent issued a notice dated 20.1.2014 as if he got information about the fact that the lease deed given by the Petitioner at the time of getting it registered was a forged one by the 2nd Respondent, who is a landlord of the Petitioner's premises and the lease deed was not a registered one and that based on the appeal filed by the 2nd Respondent before the Tamil Nadu Information Commission, Chennai-18, an hearing was fixed on 19.1.2015 and the 1st Respondent advised the Petitioner to get a fresh rental agreement to be signed both by the land lord and the tenant in his Chamber. The 1st Respondent has given only 5 days time. On 21.1.2015, the 1st Respondent recorded a statement from the Petitioner and the 2nd Respondent. On 25.2.2015, the Petitioner has given a detailed explanation for each and every allegation. As the signature of the 2nd Respondent put in the lease deed has to be tested by the handwriting expert, the Petitioner sought for test by an expert.

b. The 2nd Respondent played fraud by signing the deed differently with a criminal intention to extract the profit of the Petitioner. In the lease agreement dated 20.4.2012, the 2nd Respondent has agreed and given 50% of the undivided share in the land to the Petitioner's wife. In the lease agreement dated 16.3.2013, the 2nd Respondent put the signature in full. The 1st Respondent did not conduct any enquiry nor did not enquire the witness to the document. Since the 2nd Respondent did not produce the original lease to the 1st Respondent and the 1st Respondent failed to enquire the witnesses, no conclusion would be arrived about the allegation made in the notice.

c. On 29.4.2015, the Petitioner has given a representation explaining the above said facts. As per clause 8 of the agreement, the lessee has to pay the rent of 50% of the land area to the Mutt, and therefore, the 2nd Respondent is not the absolute owner of the property and the superstructure belongs to the wife of the Petitioner. There is no mandatory provision in the Tamil Nadu Value Added Tax Act, 2006 that the Petitioner has to produce no objection certificate from the landlord. While applying for registration certificate, the Petitioner submitted a copy of the original agreement with the 1st Respondent. After notice by the 1st Respondent and the reply by the Petitioner, the 1st Respondent called upon the Petitioner and the 2nd Respondent to produce the original agreement for verifying the signature by the handwriting expert. The original agreement was given to him while filing the application for registration and the 2nd Respondent, who is legally bound to possess the original agreement, failed to produce the original agreement and hence, the 1st Respondent passed the impugned order, cancelling the registration certificate. Hence, this Writ Petition has been filed for the relief as stated above.

3. The 2nd Respondent has filed a counter, contending that the wife of the Petitioner and the 2nd Respondent are the partners of the Petitioner firm and on false representation, the Petitioner got registration in TIN 33880252605 under the Tamil Nadu Value Added Tax Act, 2006 and also in CST 92/601 under the CST Act. The 2nd Respondent is the lessee of the land and has been paying the land rent and the 2nd Respondent has put up the superstructure. The wife of the Petitioner does not have 50% of the right in the lease. Allegation with regard to signature is false. Originally, on 20.4.2012, the 2nd Respondent entered into a lease agreement with the wife of the Petitioner and subsequently, the same was invoked and a partnership deed dated 7.1.2013 was entered into between the 2nd Respondent and her. As per clause 6 of the partnership deed, the capital of the firm was Rs.5,00,000/-, which amount shall be contributed by her and the 2nd Respondent contributed the shop in form of the capital and at the time of dissolution of the firm, he has exclusive right on the shop. As per the clause 7, the profit and loss sharing ration between the partners viz. party of first part and party of the second part is 99% and 1% respectively. As per the said ratio, he was given Rs.10,000/- per month as his profit share from the firm by her, who has stopped to pay the said profit ratio after these litigations. It is mandatory to produce no objection certificate from the landlord for obtaining TIN and the Petitioner has manipulated and created a false deed by forging his signature and obtained TIN and the Petitioner concealed the said partnership deed and registered the firm in his name as a Proprietor. The 2nd Respondent filed an appeal before the State Information Commission, which passed an order on 13.1.2015. On 20.1.2015, the 1st Respondent issued a notice to him and to the Petitioner and a

detailed enquiry was conducted The lease agreement submitted by the Petitioner for obtaining the registration is a forged document and it was not signed by him. On 20.4.2015, it was directed by the Department to produce the originals, failing which action would be initiated and accordingly, he produced the originals available with him and after perusal of all the records only on 1.6.2015, the registration was cancelled.

4. The learned counsel for the Petitioner contended that 1st Respondent erred in law in cancelling the registration certificate without examining the real owner and also without enquiring the witnesses to the agreement and that as per the lease agreement, the wife of the Petitioner had 50% of the land right and hence, the possession of the Petitioner is legal when there is no mandatory provision under the Act to produce no objection certificate from the landlord and that the impugned order has been passed, without getting any report from the handwriting expert and without verifying the original lease agreement and the 1st Respondent has no authority to go into the dispute, if any between the landlord and the tenant, once the possession is lawful and therefore, the impugned order is without jurisdiction and liable to be set aside.

5. The learned Additional Government Pleader for the 1st Respondent has contended that for any reason, the registration certificate can be cancelled and hence, sought for dismissal of this Writ Petition.

6. The learned counsel for the 2nd Respondent contended that the lease agreement submitted by the Petitioner for obtaining the registration is a forged document and it was not signed by him and he produced the originals available with him and after perusal of all the records only, the impugned order has passed, cancelling the registration.

7. This court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

8. According to the Petitioner, the Petitioner and the 2nd Respondent are the partners of the Petitioner Firm. The Petitioner is doing the business in the property in question. The 2nd Respondent got the said property on rent and the wife of the Petitioner entered into a lease agreement with the 2nd Respondent. It was agreed that 50% of the right in the undivided share was given to the lessee as shown in the schedule. The 1st Respondent issued a notice dated 20.1.2014, proposing to cancel the registration certificate, on the

allegation that the lease deed was a forged one. The 1st Respondent advised the Petitioner to get a fresh rental agreement and on 25.2.2015 and thereafter, the Petitioner has given a detailed explanation for each and every allegation. Since the original deed was not produced by the 2nd Respondent, the 1st Respondent passed the impugned order, cancelling the registration certificate, without conducting any enquiry and examining the witnesses. The signature of the 2nd Respondent put in the lease deed is a forged one and has to be tested by an handwriting expert.

9. On the contrary, it is the case of the Petitioner that the 2nd Respondent is the lessee of the land and has been paying the land rent and the 2nd Respondent has put up the superstructure. The wife of the Petitioner does not have 50% of the right in the lease. Allegation with regard to signature is false. Suppressing the entire facts, the Petitioner obtained order of interim stay on 1.6.2015 and the 2nd Respondent preferred a complaint before the police, regarding the manipulation of his signature in the alleged forged lease agreement and the 1st Respondent conducted a detailed enquiry and only after giving opportunity to the parties concerned, the impugned order was passed.

10. At this juncture, it is relevant to extract the provisions of Section 39 (13), 14) and (15) of the Tamil Nadu Value Added Tax Act, 2006, as under:-

> "39. Procedure for registration: -
>
> (13) A registered dealer shall be entitled to have his registration cancelled, if he is able to prove to the satisfaction of the prescribed authority that his turnover in each of the two consecutive years immediately preceding the application was less than the limit specified in section 3.
>
> (14) The authority granting the certificate of registration may, by order, for good and sufficient reasons to cancel, modify or amend any certificate of registration granted by it.
>
> (15) No application for registration or for a copy or duplicate of the certificate under this section shall be refused and no order under sub-section (14) shall be made, unless the dealer concerned has been given an opportunity of being heard."

11. The Petitioner was given sufficient opportunity of furnishing a representation, written submissions and being heard. However, there is no evidence produced by the Petitioner to show that they fulfilled their obligations under the said provisions of Act . As per the provisions of Section 39 of the Tamil Nadu Value Added Tax Act, 2006, for good and sufficient reasons, the authority, granting the certificate of registration, can cancel the registration certificate. According to the said provisions, the impugned order has been passed, on the reason that the original lease agreement was not produced, in order to verify the genuineness of the document in question. Further, all the above disputed facts, raised by the Petitioner and the 2nd Respondent, cannot be gone into in this Writ Petition. Since there are various disputes raised between the parties, the same can be agitated by the Petitioner before the Revisional Authority by filing a revision.

12. In such view of the matter, this Writ Petition is dismissed. No costs. Consequently, the connected MP is closed. However, liberty is given to the Petitioner to file a revision against the impugned order before the concerned revisional authority concerned, within a period of two weeks from the date of receipt of a copy of this order and on such filing within the time granted above, the revisional authority shall consider the same and pass appropriate orders, after giving opportunity to the parties concerned, on merits and in accordance with law, within a period of four weeks thereafter.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srcm

To:

The Assistant Commissioner (CT),
Peddunaickanpet Assessment Circle, Chennai-1

+1cc to Mr.R.Rajavadivelu, Advocate, S.R.No.56479
+1cc to Mr.S.Ramesh Kumar, Advocate, S.R.No.56434
+1cc to the Special Government Pleader(Taxes), S.R.No.56685

WP.No.16508 of 2015

SR(CO)
CA(27/10/2015)