

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.17355 of 2015

And

M.P.No.1 of 2015

Crescent Trade Links
(Represented by A.A.Mohammed Ziaudeen
Managing Partner)

...Petitioner

Vs.

1. The Assistant Commissioner (CT)
R.G.Street Circle
Coimbatore.
2. The Deputy Commercial Tax Officer
Group - II, Pollachi.

...Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records on the files of the first respondent herein in TIN: 33721762525/2015-16 dated 05.06.2015, quash the same, and further direct the first respondent to complete an assessment.

For Petitioner : Mr.N.Prasad

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (T)

ORDER

This writ petition has been filed by Crescent Trade Links represented by its Managing Partner A.A.Mohammed Ziaudeen, seeking Writ of Certiorarified Mandamus calling for the records on the files of the first respondent in TIN: 33721762525/2015-16 dated 05.06.2015, to quash the same with further direction to the first respondent to

complete assessment and pass further order on merits.

2.Learned counsel appearing for the petitioner would submit that the petitioner being a partnership firm having registered under the Partnership Act is involved in the activity of trading of ceramic tiles, ceramic sanitary ware sinks, batch showers, pipes and fittings. It is also having its registered office in Coimbatore along with branches and godowns in various places in Coimbatore. Whileso, there was an inspection at the premises of the petitioner on 10.04.2015. In the course of the inspection various allegations were made against the petitioner with regard to the short payment of tax. The following defects were also pointed out:

"i. There was an allegation of omission to report purchases in the return vis-a-vis the books of accounts.

ii. There was an allegation that the petitioners have recovered additional amounts from the buyers in comparison with that mentioned in the invoice.

iii. There was an allegation of stock variation.

iv. It was alleged that verification of the returns of the petitioners revealed that buyers had not reported the entire turnover of sales to the petitioners. As regards this proposal, the allegation was made in respect of the assessment years 2009-10 to 2014-15."

3. The petitioner also offered explanation on each of the issues in the course of the inspection itself to the second respondent herein. However, the second respondent refused to accept the explanation and arbitrarily arrived at alleged tax demand of Rs.42,72,722/-. The second respondent once again arbitrarily demanded payment of the same and asked for issuance of the cheque. Accordingly, to avoid embarrassment and further not to precipitate the issue, the petitioner was compelled to issue two cheques namely, cheque no.188422 dated 10.04.2015 for Rs.16,00,000/- and cheque no.188423 dated 10.04.2015 for Rs.20,00,000/-. Petitioner immediately at the time of issuing the cheque under compulsion explained before them that they do not have sufficient money in the Bank, inspite of it the second respondent collected the two cheques and when there being no assessment order either provisionally or

finally, the respondent has no authority or power to issue the notice asking the petitioner to pay cash along with penalty under Section 42 (3) of the Act.

4. Concluding his argument, he would submit that when the assessment of the petitioner in respect of the property in question explaining the assessment period 2014-15 is deemed to be completed under Section 22(2) of the TNVAT Act, if recovery is sought to be initiated there has to be a re-assessment under Section 27 of the TNVAT Act. That apart the impugned notice also refers to arrear under Section 42 of the Act which segregation would be arrived only after completion of the assessment and demand in Form 'O'. But in the present case, neither of the two situations has been complied with by the respondent. Therefore, the impugned order is liable to be quashed on the ground of want of jurisdiction.

5. Heard the learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (T) who takes notice for the respondents.

6. Mr.S.Kanmani Annamalai, learned Additional Government Pleader (T) appearing for the respondents is unable to show before this Court on what basis the recovery order has been passed. When a pointed question was put to Mr.S.Kanmani Annamalai whether there is an assessment order or at least notice of demand in Form 'O' was issued, he was not able to show any cause for the recovery order.

7. Therefore, this Court is of the considered view that when there is no assessment order or notice issued, the impugned notice of demand of cash amount is wholly untenable and illegal in terms of Section 269 B of the Income Tax Act. Therefore, the impugned order is quashed.

8. It is brought to the notice of this Court by the learned counsel appearing for the petitioner that one cheque amount has been utilized and amount of Rs.16,00,000/- has been realized. However, the second cheque which appears to have been dishonoured for want of sufficient fund shall be returned to the petitioner. Since the petitioner is challenging the liability, he should be given notice of assessment followed by personal hearing and thereafter, the respondent shall proceed on merits to pass appropriate assessment order after complying with all the conditions after giving notice followed by personal hearing.

9. Accordingly, the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT)
R.G. Street Circle
Coimbatore.
2. The Deputy Commercial Tax Officer
Group - II, Pollachi.

1CC to Mr. N. Inbarajan, Advocate, SR 29800

1CC to the Spl. Govt. Pleader, SR 29933

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EV [CO]
PSI 11.08.2015

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