IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.18033 of 2015
and M.P.No.1of 2015

Malathy [Petitioner]
Prop: Malathy Brick Industry
W/o.Shanmugam
No.37/A/2 Pidari Amman Koil Street
Poovam Varichikudy Karaikal
U.T. of Puducherry

Vs

The Commercial Tax Officer
Commercial Taxes Department
Karaikal, Puducherry

[Respondent]

PRAYER : The Writ petition is filed under Article 226 of the Constitution of India praying for a Writ of certiorari calling for the records on the files of the respondent herein in Notice for Recovery of Money due in Form U dated 27.5.2015 quashing the same and for consequential repayment of money of Rs.97000/- attached from the bank.

For Petitioner : Mr.P.Suresh
For Respondent : Mr.A.Tamilvanan, GA(Pondy)

O R D E R

Heard Mr.P.Suresh, learned counsel for the petitioner and Mr.A.Tamilvanan, learned Government Advocate (Pondy), who took notice for the respondent and with their consent, the main writ petition is taken up for final disposal.

2. This writ petition has been filed challenging the notice of recovery of money due in Form U dated 27.05.2015 issued by the Commercial Tax Officer, Commercial Taxes Department, Karaikal, Puducherry to the Branch Manager, Indian Bank, Karaikal, requesting them to make arrangements to pay the amount lying at their credit on behalf of the dealers by means of Demand Draft drawn in favour of him, by enclosing a statutory notice in form U for compliance.

3.1 The learned counsel for the petitioner would submit that the petitioner, who is running the business in the name and style of M/s Malathy Brick Industry, is engaged in the manufacture of fly ash bricks. The unit is also registered with the Industries Department, Puducherry vide registration No.34004114251 dated 14.10.2008 for manufacture of fly ash bricks with Tax Identification Number 34340011916 and Central Sales Tax Number 34340011916 dated 02.12.2008 under the Puducherry Value Added Tax Act, 2007 and Central Sales Tax Act, 1956, on the file of the Commercial Tax Officer, Karaikal.

3.2 According to the learned counsel for the petitioner, the petitioner is filing the returns according to the sales of fly ash bricks and paying tax at the rate of 5% without any default. Whileso, the respondent along with other officers, inspected the manufacturing site on 13.02.2015 at 12.30 p.m. and examined the methodology adopted for production and also the production capacity of Cycle Fly Ash Tank and the raw materials. After obtaining a statement from the husband of the petitioner during inspection on 13.02.2015, a notice was issued on 12.03.2015, stating that the cement constituted only 5% which is roughly equivalent to 155 gms of the total brick weight of 3100 gms and therefore, just 155 gms of cement alone is required to manufacture one brick and hence, 3289675 bricks could have been manufactured out of 10198 bags of cement purchased by the dealer during the period 01.04.2013 to 31.01.2015, resultantly, there is suppression of turnover and evasion of tax on the sale of bricks and hence they proposed to levy tax and penalty. Pursuant thereto, the petitioner also submitted a detailed objection, on 21.03.2015, stating that the determination of tax liability was made taking into account 5% of the cement used in making bricks, while in fact, it was used at an average of 6% and moreover, the sale price of brick is fixed based on the quality of brick and the bricks are sold below Rs.3.90/- per brick as per the schedule of rates approved by the Chief Engineer, Public Works Department, Government of Puducherry for the 2013-2014. On that basis, it was submitted by the learned counsel for the petitioner that the conclusion reached by the respondent with regard to suppression of turnover and evasion of tax on the sale of bricks for the period from 01.04.2013 to 31.01.2015, is erroneous.

3.3 Adding further, learned counsel for the petitioner would submit that when the petitioner has filed a detailed objection to the notice dated 12.03.2015, finally, the respondent has passed the assessment order 16.04.2015 and pursuant thereto, notice of recovery dated 27.05.2015 was issued. Therefore, the respondent ought not to have issued the notice of recovery dated 27.05.2015. Hence, the petitioner is before this Court.

4. The learned Government Advocate (Pondy), at this point of time, submitted before this Court that the writ petition is not maintainable, since the petitioner has not challenged the correctness

of the final assessment order dated 16.04.2015. He further submitted that without challenging the said assessment order which is also appealable by filing revision, simply, the consequential notice of recovery dated 27.05.2015, cannot be challenged before this Court under Article 226 of the Constitution of India.

5. This Court finds force in the submission of the learned Government Advocate. As rightly pointed out by the learned Government Advocate, the petitioner, having accepted the assessment order dated 16.04.2015 issued by the Commercial Tax Officer, the correctness of which can also be agitated before the revisional authority, cannot challenge the consequential recovery notice dated 27.05.2015. Hence, this Court is not inclined to entertain the writ petition.

Hence, the writ petition fails and the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

The Commercial Tax Officer
Commercial Taxes Department
Karaikal, Puducherry.

1 cc to Public Prosecutor, Pondicherry, Madras Sr.31069
1 cc to Mr.P.Suresh , Advocate Sr.No.31374

W.P.No.18033 of 2015

pvr(co)
pmk.28.7.2015