IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.22007 of 2015
and
M.P.No.1 of 2015

Tvl.SGS Marketings
Rep. by its Partner Mr.G.Sandeep Das
No.294 , Purasawalkam High Road
Kellys, Chennai-10. ...Petitioner

Versus

The Assistant Commissioner(CT)
Ayanavaram Assessment Circle
Taylors Road, Chennai-10. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the files of the respondent proceedings in TIN/33821003639/2013-14 dated 29.05.2015 and quash the same being illegal, invalid, without authority of law and violated the principles of natural justice and also law laid down by the Honourable Court.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.S.Kanmani Annamalai
Addl. Govt. Pleader

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader takes notice for the respondent. With the consent of both sides, the Writ Petition itself is taken up for final disposal.

2. This Writ Petition has been filed by SGS Marketings, represented by its Partner Mr.G.Sandeep Das, challenging the impugned order passed by the Assistant Commissioner (CT), Ayanavaram Assessment Circle, Chennai, in TIN/33821003639/2013-14 dated 29.05.2015, in and by which, the respondent directed the petitioner to pay the tax due at Rs.2,65,429/- along with penalty of Rs.3,98,143/- under Section 22(5) of TNVAT Act, 2006.

3. The learned counsel appearing for the petitioner fairly submitted that the petitioner has not filed reply to the pre-assessment notice, but filed the returns manually.

4. In view of the fact that the petitioner had failed to file the reply to the pre-assessment notice, the respondent has passed the impugned order. However, the petitioner has moved an application under Section 84 of the TNVAT Act setting out the entire details that the petitioner has been filing the returns regularly, of course, through manual filing and not through on-line filing. In the mean while, before disposing of application filed under Section 84 of the TNVAT Act, the respondent has passed an attachment notice in Form-U dated 09.07.2015. As a result, the petitioner is not in a position to approach the appellate authority. The reason is, his application filed under Section 84 is also pending for consideration.

5. The learned Additional Government Pleader (Taxes) appearing for the respondent repeating the reasons given in the impugned order against the petitioner that he had never responded to the pre-assessment notice, has invited the order, therefore, no interference can be called for.

6. I fully agreed with the submission made by the learned Additional Government Pleader (Taxes). However, one another fact remains to be seen is after passing of the impugned order of assessment by the respondent, the petitioner has moved an application under Section 84 of the Act and the same is pending. Therefore, at this stage directing the petitioner to approach the appellate authority, in my view, may not be proper. Therefore, pending application filed under Section 84 of the Act, in any event, is bound to be disposed of by the Assessing Officer.

7. In view of the above, this Writ Petition is disposed of and the respondent is directed to consider the application filed by the petitioner on 02.06.2014 under Section 84 of the TNVAT Act on merits and in accordance with law, after affording reasonable opportunity to the petitioner. Till then the auction notice shall not

be proceeded and the recovery proceedings shall be kept in abeyance. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

mra

Note:

Registry is directed to return the original impugned order to the petitioner.

To

The Assistant Commissioner(CT)
Ayanavaram Assessment Circle
Taylors Road, Chennai-10.

1 CC to Mr.D.Vijayakumar, Advocate SR.No. 37088

1 CC to the Government Pleader, SR.No. 37292

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VSN (CO)
PSI (24.07.2015)