IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.22935 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.Divya Agency,
represented by its partner,
No.1850, I-Block,
6th Avenue, Near Thangam Colony,
Anna Nagar, Chennai - 40. ...Petitioner

vs.

The Assistant Commissioner (CT),
Amaindakarai Assessment Circle,
Chennai - 600 010. ...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in the impugned order in TIN No.33881023297/2012-13 dated 15.5.2015 quash the same as there is an error on record and direct the respondent to release the Bank Attachment made vide Notice TIN No.33881023297/A3/2015 dated 17.7.2015.

For petitioner : Ms.Radhika Chandra Sekhar

For respondent : Mr.V.Haribabu,
Additional Government Pleader
(Taxes)

ORDER

Head Ms.Radhika Chandrasekhar, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main Writ Petition is take up for final disposal.

2. This Writ Petition has been filed by M/s.Divya Agency represented by its partner, Chennai, challenging the correctness of the impugned Assessment Order in TIN No.33881023297/2012-13 dated 15.05.2015 and to release the bank attachment made vide notice TIN No.33881023297/A3/2015 dated 17.7.2015.

3. Learned counsel for the petitioner would submit that the petitioner is a registered distributor of M/s.PEPSICO India Pvt.Ltd., and they have been paying VAT and filing monthly returns regularly and the impugned order is challenged on the ground that there is an error apparent on the face of the record. Adding further, the learned counsel for the petitioner would submit that the impugned order shows the turnover as Rs.10,76,191/- whereas tax was shown as Rs.2,14,55,264/-. This itself clearly shows that the figures mentioned in the impugned Assessment Order is incorrect since when the turnover itself is mentioned in lakhs, tax cannot be in crores. According to the petitioner, purchases made by the petitioner from PEPESICO for the Assessment Year 2012-2013 is to the extent of Rs.8,68,57,341/- whereas the impugned order wrongly mentions as Rs.10,76,191/- and as also VAT is wrongly mentioned as Rs.2,14,55,264/-.

4. Therefore, the learned counsel for the petitioner submits that an Application was taken by the petitioner under Section 84 of the Tamil Nadu Value Added Tax Act 2006. However, since the same was not accepted, it was sent by registered post on 23.7.2015. The respondent has not even considered the error apparent on the impugned order, inspite of the fact that the same was brought to their notice. Therefore, the petitioner was constrained to file this Writ Petition for the relief stated above.

5. Learned Additional Government Pleader (Taxes) would submit that when the Assessment Order was passed on 15.5.2015, the petitioner filed the Application under Section 84 of the Act on 23.7.2015 and rushed to this Court to drag on the matter, more particularly, to keep the attachment order in abeyance and therefore, no indulgence should be shown.

6. In the light of the facts and submissions made, this Court finds merits in the submission of the learned counsel for the petitioner. As rightly pointed out by the learned counsel for the petitioner, in the impugned assessment order, the turn over is mentioned as Rs.10,76,191 whereas Tax is mentioned as Rs.2,14,55,264/-. This itself clearly shows that the figures mentioned in the impugned Assessment Order is wholly incorrect since when the turnover itself is mentioned in lakhs, tax cannot be in crores.

7. In view of the above fact, without expressing the merits of the matter, the respondent is hereby directed to consider the Section 84 Application sent by the petitioner through registered post, maintainable in law, and pass orders on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner. It is made clear that till such time, the impugned Assessment Order shall be kept in abeyance. The Bank Attachment made vide Notice in TIN No.33881023297/A3/2015 dated 17.7.2015 is set aside. The Writ Petition is allowed. No costs. The connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

asvm

To

The Assistant Commissioner (CT),
Amaindakarai Assessment Circle,
Chennai - 600 010.

1 CC to Mr.K.Vaitheeswaran, Advocate SR.No. 38934

1 CC to the Government Pleader, SR.No. 38944

W.P.No.22935 of 2015
and
M.P.Nos.1 and 2 of 2015

TM (CO)
PSI (20.08.2015)