IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.23077 of 2015
and
M.P.No.1 of 2015

Murali Kabirdass .. Petitioner

vs.

1.The Assistant Commissioner (CT),
Commercial Tax Department,
Thiruverkadu Assessment Circle,
Chennai - 600 107.

2.Appellate Deputy Commissioner (CT)-VI,
PAPJM Buildings, Greems Road,
Chennai - 600 006. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned Notice of the first respondent in TIN 33111346391/2015-16 dated 20.07.2015 and quash the same as illegal and arbitrary.

For petitioner : Mr.N.Mahendran

For respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), takes notice for Respondent. With the consent of both the parties, the Writ Petition is taken up for disposal at the admission stage itself.

2. This Writ Petition is directed against the impugned notice dated 20.7.2015 issued by the first respondent directing the petitioner to pay the arrears amount within 7 days from the date of receipt of such notice.

3. Assailing the impugned notice, the learned counsel for the petitioner would submit that when the petitioner's Appeal in A.P.Nos.123 and 124 of 2015 filed along with stay petitions against the Assessment Order dated 30.3.2015 passed by the Assessment Officer are pending, the Assessing Officer cannot hurriedly pass the

impugned notice in a way to render the Statutory Appeals infructuous. Adding further, the learned counsel relying on the provision of Section 37 of the TNVAT Act, submitted that when the petitioner company is not in the process of winding up, the notice issued by the first respondent to the Director of a Company under Section 37 of the Act clearly shows non-application of the mind. The learned counsel for the petitioner would further submit that although the petitioner company has suffered the Assessment Order dated 30.3.2015 passed by the first respondent, as the petitioner has filed Appeals before the second respondent on 19.5.2015 along with stay petition seeking for stay of the Assessment Order dated 30.3.2015, after depositing 25% of the disputed tax with the first respondent on 15.5.2015, the first respondent ought not to have issued the impugned notice. Concluding his argument, the learned counsel for the petitioner would submit that when the first respondent issued notice dated 30.5.2014 to the company assessing the goods @ 12.5% and adjusting their input tax credit towards the tax proposed by the first respondent for the year 2010-11 and 2011-12, notice to the partners ought not to have been issued under section 37 of the TNVAT Act when the company is not winding up.

4. Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent refuting the above allegation submitted that the Writ Petition cannot be entertained since the petitioner having filed Appeals in AP Nos.123 and 124 of 2015 against the Assessment Order dated 30.03.2015, the petitioner ought to have taken efforts to get the Stay Petition numbered immediately. However, the petitioner has not taken any effort to get the stay petition numbered till now. Therefore, the first respondent need not keep quiet without passing any order till the Stay Petition, which is kept unnumbered is numbered. Adding further, he would submit that the Appeals are posted for hearing on 12.8.2015. Therefore, no prejudice would be caused if this Court directs the petitioner to approach the appellate authority by giving reason for the delay in seeking for numbering the stay petition and pursue the stay petition for the grant of stay of the impugned assessment order.

5. Heard the learned counsel appearing for the parties and perused the records.

6. This Court finds merits in the submissions of the learned Additional Government Pleader. The petitioner has already filed Appeals vide AP Nos.123 and 124 of 2015 and the same are also posted for hearing on 12.8.2015. The petitioner has not shown any interest to number the stay petition when the same has been filed along with Appeals. Therefore, this Court deems it fit to direct the petitioner to approach the appellate authority and move the stay petition within a period of 12 weeks from the date of receipt of a copy of this order. Till such time, the impugned notice shall be kept in abeyance.

7. With the above observation, the Writ Petition is disposed of. No costs. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

asvm
To
1.The Assistant Commissioner (CT),
Commercial Tax Department,
Thiruverkadu Assessment Circle,
Chennai - 600 107.

2.Appellate Deputy Commissioner (CT)-VI,
PAPJM Buildings, Greems Road,
Chennai - 600 006.

1 cc to Mr.S.Velusamy , Advocate Sr.No.39672
1 cc to Special Government Pleader.Sr.No.39974

W.P.No.23077 of 2015
and
M.P.No.1 of 2015

msm(co)
pmk.10.8.2015