IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.23264 of 2015
and
M.P.No.1 of 2015

Tvl. Balaji Agency
Represented by its Proprietor,
Thiru. G.Sivasubramanian,
No.52 Rathina Mudali Street,
Kurinjipadi, Cuddalore Taluk. [Petitioner]

Vs

1 The Assistant Commissioner(CT)
Cuddalore Taluk Commercial Taxes Buildings
Cuddalore-607001.

2 The Joint Commissioner of Commercial Taxes
Vellore Division I Floor
No.4 Bharathiar Salai Fort Round
Vellore-632001.

3 The Sub-Registrar
Buvanagiri Road Kurinjipadi
Cuddalore Taluk. [Respondents]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records in respect of the impugned Notices in Form 1 and Form-4 Ref.No. A3/585/2015 dated 10.07.2015 of the First Respondent issued under Sections 8 and 25 respectively of the Tamil Nadu Revenue Recovery Act 1864 read with Section 42 of the Tamil Nadu Value Added Tax Act 2006, quash the same.

For Petitioner : Mr.S.P.Asokan

For Respondent : Mr.S.Kanmani Annamalai,
AGP (Taxes) (R1&2)

ORDER

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondents 1 & 2 and with their consent, the main writ petition itself is taken up for hearing.

2. This writ petition has been filed by Tvl. Balaji Agency, represented by its Proprietor G.Sivasubramanian, challenging the correctness of the impugned notices in Form 1 and Form-4 Ref.No. A3/585/2015 dated 10.07.2015 issued by the Assistant Commissioner (CT), Cuddalore, the 1st respondent under Sections 8 and 25 respectively of the Tamil Nadu Revenue Recovery Act, 1864 read with Section 42 of the Tamil Nadu Value Added Tax Act 2006.

3. Learned counsel for the petitioner would submit that when the petitioner has filed a revision petition under sub clause (1) of Section 54 of the Tamil Nadu Value Added Tax Act, 2006, (hereinafter referred to as TNVAT Act") before the Joint Commissioner of Commercial Taxes, Vellore Division, the 2nd respondent herein, challenging the correctness of the order passed by the Assistant Commissioner(CT), Cuddalore, the 1st respondent herein, rejecting the rectification application filed by the petitioner under Section 84 of the TNVAT Act, before disposal of the pending revision, the 1st respondent ought not to have issued the impugned notices.

4. Learned counsel for the petitioner in support of his submission, has relied on an order dated 02.06.2015 passed by me in W.P.No.15339 of 2015 in the case of M/s Royal Metals vs. The Assistant Commissioner (CT), Broadway and another, wherein, in a similar circumstance, I have held that it is not proper on the part of the respondent in taking coercive steps against the petitioner therein during the pendency of the revision petition along with stay application.

5. Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) submitted that the petitioner's rectification petition having been dismissed by the 1st respondent, he has preferred a revision and during the pendency of the revision petition, since no order of stay has been passed, the 1st respondent has issued the impugned notices.

6. This Court finds no merit in the submission of the learned Additional Government Pleader (Taxes). Admittedly, it is a case where the petitioner has suffered an order, against which he moved an application under Section 84 of the TNVAT Act before the 1st

respondent, who has rejected the same, as against which, the petitioner has preferred a revision petition under sub clause (1) of Section 54 of the TNVAT Act before the 2nd respondent along with an application seeking stay of the impugned order therein on 6.03.2015. Therefore, in all fairness, the impugned notices ought not to have been issued.

7. That apart, on the basis of the earlier order passed by me in W.P.No.15339 of 2015 dated 02.06.2015 in the case of M/s Royal Metals vs. The Assistant Commissioner (CT), Broadway and another, wherein it is held as follows:-

> "4. This Court finding that the impugned order that has been passed without prior notice to the petitioner, that too, pending revision along with stay application on the file of the second respondent, is not able to support the impugned order, hence, the impugned order is liable to be set aside. Accordingly, the same is set aside. However, the second respondent, the Joint Commissioner of Commercial Taxes, Chennai (North) Division, Greams Road, Chennai is hereby directed to take the revision petition along with the stay petition and pass appropriate orders on merits and in accordance with law expeditiously".

this writ petition is disposed of by setting aside the impugned notices dated 10.07.2015, with a direction to the Joint Commissioner of Commercial Taxes, Vellore Division, the 2nd respondent herein, to take up the revision petition along with the stay application and pass appropriate orders, on merits and in accordance with law, as expeditiously as possible. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1 The Assistant Commissioner(CT)
Cuddalore Taluk Commercial Taxes Buildings
Cuddalore-607001.

2 The Joint Commissioner of Commercial Taxes
Vellore Division I Floor
No.4 Bharathiar Salai Fort Round
Vellore-632001.

3 The Sub-Registrar
Buvanagiri Road Kurinjipadi
Cuddalore Taluk.

1 CC to Mr.S.P.Asokan, Advocate SR.No. 39464

1 CC to the Government Pleader, SR.No. 39977

W.P.No.23264 of 2015

KGK (CO)
PSI (24.08.2015)