IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.10.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.24667 and 24668 of 2015 and
M.P.Nos.1 and 1 of 2015

E.Gowri Maheshkumar ... Petitioner in both WPs

Vs

The Assistant Commissioner (CT),
Avinashi Assessment Circle,
Avinashi, Tiruppur District. ...Respondent in both WPs

Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of certiorari calling for the records of the respondent in Va.Vi.No.33372080829/2000 - 2001 to 2001 -2002/A3 dated 22.7.2015 and Va.Vi.No.294694/2001 - 2002 dated 24.7.2015 and quash the same as illegal without jurisdiction and against the principles of natural justice.

For Petitioner :Mr.K.Soundararajan

For Respondent :Mr. V.Haribabu, AGP

COMMON ORDER

Writ petitions are filed for the issuance of a writ of certiorari calling for the records of the respondent in Va.Vi.No.33372080829/2000-2001 to 2001-2002/A3 dated 22.7.2015 and Va.Vi.No.294694/2001 - 2002 dated 24.7.2015 and quash the same.

2. The case of the petitioner is that the petitioner joined M/s. Sri Kanniamman Cotton Textiles (P) Limited as Director during the year 1996 which is manufacturing cotton yarn and registered under the Tamil Nadu General Sales Tax Act and the Central Sales Tax. While so, during the year 2001 there was a raid conducted by Central Excise Department. The entire records of the petitioner's company were seized and were not returned till date. On 24.02.2011, the respondent had issued a notice and directed the petitioner's company to produce books of accounts. Even though the petitioner's company submitted that the books were seized by the Excise Department, the respondent had confirmed his proposals including penalty at 150% in his proceedings in TNGST 2080829/2000-2001 and CST 294694/2001-2002 respectively dated 31.03.2011. Against the above proceedings, the petitioner

company filed two writ petitions in W.P.No.12781 and 12782 of 2011 and the writ petitions are pending for consideration before this Court. In these circumstances, the respondent had issued the impugned distraint orders dated 22.07.2015 and 24.07.2015 under Section 8 of Revenue Recovery Act without serving a demand. Hence the present writ petitions have been filed.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing on behalf of the respondents.

4. For the assessment years under TNGST Act, relating to 2000-01 to 2001-02, the petitioner's company filed writ petitions in W.P.Nos. 12781 and 12782 of 2011. Considering the merits of the case, this Court granted interim orders and the same are still continuing. In the meantime, with reference to the same assessment years, recovery proceedings are sought to be invoked against the petitioner by the impugned orders dated 22.7.2015 and 24.07.2015 respectively which is nothing but non application of mind and cannot be countenanced. When the interim orders had already been granted in the above mentioned writ petitions, it is not open to the respondents to proceed for recovery. Hence the distraint proceedings in these writ petitions are not sustainable and accordingly, the same are quashed. It is open to the respondent to proceed further as per law on the outcome of the writ petitions in W.P.No.12781 and 12782 of 2011.

5. Writ petitions are disposed of accordingly. Consequently, connected miscellaneous petitions are closed. No costs.

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Sd/-
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner (CT),
Avinashi Assessment Circle,
Avinashi, Tiruppur District.

+2 ccs to Mr.R.Sundarrajan, Advocate, sr.55809
+1 cc to Mr.Government Pleader, sr.56006.

W.P.Nos.24667 and 24668 of 2015

lrs co
kra 04/11/2015