IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.26194/2015 and
M.P.Nos.1 and 2 of 2015

S.Venkateswaran ... Petitioner

Vs

1 The Additional Commissioner
(Commercial Taxes) Chennai-34.

2 The Commercial Tax officer
Palladam Coimbatore District.

3 The Branch Manager
Corporation Bank Singanallur Coimbatore-641 005. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari calling for the records on the file of the 2nd respondent relating to the notices of the 2nd respondent bearing Ref. TIN No. 33446247086/2015/A3 dated 13.08.2015 and Form U dated 13.08.2015 bearing Ref.Nil and quash the same

For Petitioner :Mr.Bharathachakravarthy

For R1 and R2 :Mr.Mr.S.Manohar Sundaram AGP(T)

ORDER

The writ petition is filed for the issuance of a certiorari calling for the records on the file of the 2nd respondent relating to the notices of the 2nd respondent bearing Ref. TIN No. 33446247086/2015/A3 dated 13.08.2015 and Form U dated 13.08.2015 bearing Ref.Nil and quash the same.

2. Petitioner is a registered dealer with Palladam Assessment Circle and is a dealer of various Ayurvedic medicines. The products dealt by the petitioner are manufactured under the Drug licence issued by the Controller of Drugs (ISM) & Licensing Authority, Kerala vide licence No.22/25D/2010 dated 29.4.2013, which is valid till 28.4.2018. For the assessment year 2014-15,

pre-assessment notice was issued on 11.08.2015 and the same was served on 13.08.2015. On the same day, without passing any assessment order, the bank account was directed to be attached by the Assessing Authority. Hence, the petitioner is before this Court.

3. According to the learned counsel for the petitioner for the earlier assessment years 2012-13, the products of the petitioner was classified only as Ayurvedic medicinal preparations and tax @ 5% was levied. Thereafter, revisional notice was issued on 24.07.2014 enhancing the levy from 5% to 14.5% treating the products as cosmetics. The petitioner submitted a reply as that the products dealt with by them are only Ayurvedic products which attracted only 5% tax to be levied. On the other hand, without considering the same, the 2nd respondent adopted 14.5% and passed orders provisionally, against which the petitioner moved this Court. This Court by order dated 21.11.2014 in W.P.No.30511-13 of 2014 directed the petitioner to challenge the said provisional assessment orders before the competent Appellate Authority. Accordingly, appeals and Second Appeals have been filed and the same are pending.

4. The learned counsel for the petitioner further submitted that for the assessment year 2014-15, which is in dispute in this writ petition, the pre-assessment notice dated 11.08.2015 was issued and served on 13.08.2015 and without awaiting the reply to be filed by the petitioner, the Assessing Authority straight away even prior to the passing of order of the assessment attached the bank account of the petitioner which act of the respondent is not only improper and also against the provisions of the Act. Hence, he prayed for quashing the same.

5. The learned Additional Government Pleader appearing for the respondents fairly submitted that the attachment, prior to passing an order of assessment is bad in law and prays that necessary directions be issued for passing proper assessment order complying the provisions of the Act.

6. In view of the above, the bank attachment made by the 2nd respondent by order dated 13.08.2015 is quashed. The petitioner is directed to file necessary objections for the pre-assessment notice dated 11.08.2015 within three weeks from the date of receipt of a copy of this order. On such filing of the objections, appropriate orders be passed on merits and in accordance with law after affording due opportunities to the petitioner. The petitioner shall communicate the copy of this order to the third respondent. On such receipt of the communication, the bank attachment is directed to be lifted forthwith.

7. The Writ petition is disposed of in the above terms Consequently, connected miscellaneous petitions are closed. No costs.

Sd/--
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To
1 The Additional Commissioner
(Commercial Taxes) Chennai-34.

2 The Commercial Tax officer
Palladam Coimbatore District.

3 The Branch Manager
Corporation Bank Singanallur Coimbatore-
641 005.

+1 cc to M/s.Sai, Bharathy Ilan, Advocate, 51758
+1 cc to Mr.A.Arunbabu, Advocate, sr.51745
+1 cc to The Special Government Pleader, sr.51843

W.P.No.26194/2015

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