IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.29930 of 2015
and
M.P.No.1 of 2015

Tvl.Arunachala Impex Private Ltd.
rep. by its Managing Director
S.Kalaivani ... Petitioner

Vs

The Assistant Commissioner (CT)
Harbour Assessment Circle
Chennai 600 001. ... Respondent

Writ petition has been filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for the records on the files of the respondent in Appendix -II Distraint Order in Form No.I dated 15.09.2015 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.S.Kanmani Annamalai, AGP

O R D E R

By consent, the writ petition is taken up for final disposal.

2.Challenging the distraint order in Form No.I dated 15.09.2015 issued by the respondent, the petitioner has filed the present writ petition.

3.According to the petitioner, the petitioner is a registered dealer under the TNVAT Act, 2006 and is carrying on the business of pulses, grams and electrical items. For the assessment year 2014-15, the petitioner duly filed its return. On scrutinising the same, the respondent issued a notice dated 01.06.2015 calling for objections from the petitioner on the ground that the petitioner effected purchases from registration cancelled dealers and they have to pay the balance tax of Rs.1,64,710/-. On receipt of the same, the petitioner filed its detailed reply along with the supportive documents. The respondent neither accepting nor rejecting the reply filed by the petitioner, passed a distraint order for recovery, without passing any order of assessment for the year in question. Aggrieved against the same, the petitioner is before this court.

4.Learned counsel for the petitioner submitted that after completion of the assessment year, notice dated 01.06.2015 came to be issued, calling for objections from the petitioner relating to the transactions effected during the month of February 2015. The petitioner duly filed its reply on 08.06.2015 enclosing all the supportive documents. However, the respondent, without passing any assessment order, straight away issued the impugned distraint order and hence, the same is arbitrary, illegal and against the principles of natural justice. Learned counsel for the petitioner further submitted that once the assessment period is over, the respondent ought to have issued notice in respect of the assessment year instead of raising demands for particular months and on this score alone, the impugned distraint order cannot be allowed to sustain. Learned counsel for the petitioner also submitted that the petitioner made payment of tax relating to certain months by way of demand drafts and the same may be adjusted with regard to balance tax to be remitted.

5.On the other hand, the learned Additional Government Pleader appearing for the respondent, on instructions, fairly submitted that the Assessing Officer had in fact passed the provisional assessment order and the same has not been served on the petitioner so far.

6.I have considered the rival contentions made on both sides and perused the materials available on record.

7.Admittedly, the provisional assessment order has been passed by the respondent, but the same has not been served on the petitioner. In such circumstances, the action of the respondent by issuing distraint order for recovery of tax, cannot be justified and the same is liable to be set aside. Since the assessment period relating to the months in question was already over, this Court directs the Assessing Officer concerned to pass assessment order for the whole year, after following the procedure prescribed under the Act.

8.In view of the above, the impugned distraint order in Form No.I dated 15.09.2015 issued by the respondent is set aside. The respondent is directed to pass assessment order for the year 2014-15 on merits and in accordance with law, after issuing proper notice and after affording due opportunity of personal hearing to the petitioner. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

9.The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

rk

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Harbour Assessment Circle, Chennai 600 001.

+ 1 cc to Mr.R.Senniappan, Advocate SR 67090

+ 1 cc to Spl.G.P.(Taxes) SR 67150

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