IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6430 of 2015

M/s.Mani Electricals and Hardwares
represented by its Proprietor M.Ganesan
No.07, Villianur Road, Moolakulam
Pudcherry 605010 ..Petitioner

Vs.

The Assistant Commissioner Tax
Officer I, Office of The
Commercial Tax Officer I
Puducherry ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records of the respondent in No.3109/CTO-I/2014-15 dated 02.02.2015 to quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.A.Tamilvanan, G.A (P)

ORDER

The petitioner has come forward with aforesaid prayer.

2. Petitioner is a dealer in electrical items and paints. On 13.09.2014 Enforcement wing of sales tax department visited the premises of the petitioner and recorded proceedings alleging that there is a stock difference to the tune of Rs.88,91,771/-. The statement copy was provided to the petitioner only on writing. The respondent issued a notice dated 22.12.015 alleging stock difference for which the petitioner issued a reply and provided the list of materials in godown on 27.01.2015 and also stated that on 21.01.2015, the petitioner applied for registration of godown. However, without verifying the stock in the godown the respondent has passed the impugned order on 02.02.2015 assuming there is no goods and demanded tax and penalty against which the present petition is filed.

3. According to the respondent for the earlier notice petitioner has not stated about the godown for the first time it is stated and it is created for the purpose to avoid tax payable under The Puducherry Value Added Tax Act, 2007 (hereinafter referred to as the Act). Admittedly, the order has been passed on 02.02.2015 against which revision lies as per Section 45 of the Act. In the

impugned order authority has referred to the objections of the petitioner dated 27.01.2015. On verification of the registration records by the authorities on 19.11.2014 there is no such proof of existence of such a godown has been substantiated in the official registration records or the petitioner has been able to sustain the same. Therefore the presence of a godown and stock in the godown cannot be possibly be authenticated at a later point of time by the petitioner to the department only on 27.01.2015. Till date petitioner has not come to register godown and has created the same only to avoid the payment of tax.

4. Heard both sides.

5. The place of business whether it is registered or not need be decided and the goods available with the petitioner alone have to be taken into account for payment of VAT. Learned counsel for petitioner contended that for payment of Rs.7,00,000/- tax amount there is no need for him to buy goods worth Rs.88,00,000/- Learned counsel submitted that he is willing to deposit the amount that may be ordered by this court. When this court asked him to deposit 35% of the tax amount determined by the authority he immediately accepted the same and requested that that the amount already deposited should be adjusted. The respondent submitted that in case the petitioner prefers an appeal for revision, he has to deposit 50% of the tax amount.

6. Taking note of the issue and that the order dated 02.02.2015 had been passed after the objections by the petitioner, the respondent could have verified the godown before coming to the conclusion whether it is the registered place of business or not in determining the tax amount. In view of the same the order dated 02.02.2015 passed by the respondent is set aside. Writ petition is allowed. No costs. Connected miscellaneous petition is closed.

7. One more opportunity is given to the petitioner to appear before the authority and make his submissions. It is open to the respondent to verify the place of business before 30.04.2015. Petitioner shall deposit 35% of the tax amount less the amount already deposited if any before the respondent and shall give personal hearing on 04.05.2015.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Assistant Commissioner Tax
Officer I, Office of The
Commercial Tax Officer I
Puducherry

+1 cc to Senior Government Pleader,Puducherry,SR.14848

+1 cc to M/s.S.Raveekumar, Advocate,SR.14905.

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