IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.8214 of 2015
and
M.P.No.1 of 2015

M/s.Sunrise Chennai Distributors Private Ltd.,
represented by its Director,
No.114, Luz Church Road,
Mylapore,
Chennai - 600 004. ...Petitioner

vs.

Joint Commissioner (CT),
Chennai (East) Division,
Greams Road,
Chennai - 600 006. ...Respondent

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Prohibition to prohibit the respondent who is a quasi judicial authority exercising powers which he has no jurisdiction and still assumes and acts the power which he was not vested with as per the statute and yet issues of demand notice for collection of taxes from the petitioner, which is arbitrary, illegal as only the assessing authority alone can levy and collect taxes.

For Petitioner : Mr.C.Bakthasiromoni

For Respondents: Mr.Manoharan Sundaram,
Additional Government Pleader (Taxes)

O R D E R

Petitioner has filed this writ petition for issuance of a Writ of Prohibition to prohibit the respondent, who is a quasi judicial authority exercising powers, which he has no jurisdiction.

2. The case of the petitioner is that the assessing authority has passed an order with regard to reversal of input tax credit. Challenging such order, the petitioner filed W.P.No.3820 of 2015 before this Court and the same is pending. In the mean time, the petitioner received a notice from the respondent requesting the

petitioner to furnish details of payment for the assessment year 2013-14 under the Value Added Tax Act, 2006 (hereinafter referred to as 'Act').

3. Heard learned counsel for petitioner and learned Additional Government Pleader (Taxes).

4. According to the petitioner, the respondent has no authority to issue notice as the mode of recovery has been specifically mentioned in Section 45 of the Act, which is extracted below:

> “Section 45. Further mode of recovery.-(1) The assessing authority may, at any time or from time to time, by notice in writing a copy of which shall be forwarded to the dealer at his last address known to the assessing authority require -
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> Sec.45(1)(a) any person from whom money is due or may become due to the dealer, or to any person who has become liable to pay any amount due under this Act; or
>
> Sec.45(1)(b) any person who holds or may subsequently hold money for, or on account of the dealer or other person who has become liable to pay any amount due under this Act, to pay to the assessing authority either forthwith upon the money becoming due or being held at or within the time specified in the notice, (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the dealer or other person in respect of the arrears that have become payable under this Act or the whole of the money when it is equal to or is less than the arrears aforesaid.
>
> Sec.45(2) The assessing authority may, at any time, or from time to time, amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.
>
> Sec.45(3) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer and the receipt of the assessing authority shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount referred to in the receipt.
>
> Sec.45(4) Any person making any payment to the dealer after receipt of the notice referred to in this section, shall be personally liable to the assessing authority to the extent of the payment made or to the extent of the liability of the dealer for the amount due under this Act, whichever is less.
>
> Sec.45(5) Where any person to whom a notice under

this section is served, objects to it by a statement in the prescribed form that the sum demanded or any part thereof is not due by him to the dealer or that he does not hold any money for or on account of the dealer, then, nothing contained in this section shall be deemed to require such person to pay the sum demanded or part thereof, as the case may be, to the assessing authority, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the assessing authority to the extent of his own liability to the dealer on the date of the notice or to the extent of the liability of the dealer for the amount due under this Act, whichever is less.

Sec.45(6) Any amount which a person required to pay to the assessing authority or for which he is personally liable to the assessing authority under this section shall, if it remains unpaid, be a charge on the properties of the said person and may be recovered as if it were an arrear of land revenue.

Explanation. - For the purposes of this section, the amount due to a dealer or money held for or on account of a dealer by any person shall be computed after taking into account such claims, if any, as may have fallen due for payment by such dealer to such person and as may be lawfully subsisting."

5. According to the petitioner, only the assessing authority is empowered to call for details and the respondent has no locus to issue notice impugned in this writ petition.

6. Per contra, learned Additional Government Pleader, submitted that it is not a notice under section 45 of the Act and the respondent has requested the petitioner to furnish details of the status of further proceeding, if any, against the assessment order.

7. On a perusal of the notice dated 04.03.2015 issued by the respondent, this Court finds that it is not a notice under section 45 of the Act. Section 45 of the Act, which is extracted supra, deals with further mode of recovery. Admittedly, the assessing officer has not issued the notice, similarly, the respondent has also not issued the notice under section 45 of the Act. It is only for administrative reason, notice has been issued to the petitioner requesting it to furnish certain details. If there is no need for the petitioner to furnish those details, it is open to him to give a reply to the said notice. The grievance of the petitioner cannot hold good.

This Writ Petition is dismissed. It is open to the petitioner to reply to the respondent stating its objection, if any. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

gm

To

The Joint Commissioner (CT),
Chennai (East) Division,
Greams Road,
Chennai - 600 006.

1 cc to Mr.C. Bakthasironmani, Advocate, Sr. 16518
1 cc to the Spl.Government Pleader (Taxes), Sr. 16533

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RJ (CO)
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