IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.8929 of 2015
and M.P.No.1 of 2015

M/s. Esjaypee Impex Pvt. Ltd.,
rep. by its Director
Mr.Mahendra Parmar
No.12, I Cross, Sathya Nagar Extension
Saram, Puducherry ..Petitioner

Vs

The Commercial Tax Officer-II
No.100, Feet Road
Puducherry 605 005 ..Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus to dispose of the representation dated 06.02.2015 filed before the respondent herein and further direct the respondent to complete the assessment for the year 2009-10 under Puducherry VAT Act, 2007 and till then lift the bank attachment under Puducherry Value Added Tax Act, 2007.

For Petitioner : Ms.C.Rekha Kumari
For Respondent : Mr.A.Tamilvanan, GA (P)

O R D E R

Heard the learned counsel for the petitioner and the learned Government Advocate (Puducherry) for the respondent, who accepts notice on behalf of the respondent and with their consent, the main writ petition itself is taken up for hearing.

2. The Petitioner has come forward with this writ petition seeking a Writ of mandamus to direct the respondent to dispose of the representation dated 06.02.2015 and further to direct the respondent to complete the assessment for the year 2009-10 under Puducherry VAT Act, 2007 and till then lift the bank attachment under Puducherry Value Added Tax Act, 2007.

3. According to the learned counsel for the petitioner Company, the representative of the petitioner Company was not given an opportunity before imposing penalty.

4. The learned Government Advocate (Puducherry) appearing for the respondent contended that without exhausting the alternative

remedy, the petitioner has come before this Court. Further, according to him, the petitioner Company has paid nearly 50% of the penalty apart from the tax amount and that it was given ample opportunity, which it did not utilize.

5. In support of the above contention, the learned Government Advocate drew the attention of this Court to the notice dated 13.03.2013, wherein, it has been stated that the dealer is given an opportunity to file objections. Hence, the contention of the learned counsel for the petitioner that the petitioner was not given an opportunity cannot be accepted.

6. That apart, this Court is not inclined to grant the relief sought for by the petitioner, since the petitioner, without availing the alternative remedy under the provisions of the Puducherry Value Added Tax, 2007, has come forward with this writ petition with the aforesaid prayer. However, since the petitioner has already paid 50% of the penalty amount apart from the entire tax paid, as admitted by the learned Government Advocate, the attachment made under the Puducherry Value Added Tax Act, 2007, is directed to be lifted and the petitioner shall be permitted to operate the account.

7. Since the petitioner Company has got a right of appeal, it is open to them to prefer an appeal in accordance with law, if they are so advised, within a period of 15 days from the date of receipt of a copy of this order. It is made clear that if no appeal is filed within the time stipulated, it is open to the respondent to recover the balance penalty amount, after informing the same to the petitioner.

The writ petition is disposed of with the above direction. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer-II
No.100, Feet Road
Puducherry 605 005.

1 cc to Ms.C.Rekha Kumari ,Advocate, SR.No.18116
1 cc to Senior Government Pleader cum Senior Public Prosecutor for Puducherry,Sr.No17813

W.P.No.8929 of 2015

vsn(co)pmk.11.4.2015