IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

WP.No.9329/2015 &
MP.Nos.1&2/2015

M/s.Allvin Trader [Defunct]
rep.by its Partner Mr.Vadivel .. Petitioner

Versus

1.The Assistant Commissioner [CT]
Kangayam.

2.The Sub Registrar
Vellakovil 638 111. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records on the file of the 1st respondent in his impugned proceedings made in Roc.469/2015/A3 dated 16.03.2015 and quash the same as illegal and arbitrary.

For Petitioner : Ms.R.Hemalatha

For R1 : Mr.Manoharan Sundaram, AGP [Taxes]

For R2 : Mr.Dig Vijayapandian, AGP

ORDER

Heard Ms.R.Hemalatha, learned counsel appearing for the petitioner; Mr.Manoharan Sundaram, learned Additional Government Pleader [Taxes] accepting notice for the 1st respondent ; Mr.Dig Vijayapandian, learned Additional Government Pleader accepting notice for the 2nd respondent and with their consent, the writ petition itself is disposed of at the admission stage itself.

2.The petitioner has filed this writ petition seeking to quash the order of the first respondent dated 16.03.2015 made in ROC.No.469/2015/A3.

3. The case of the petitioner is that petitioner is a dealer in Copra and was a registered dealer on the file of the respondents. The first respondent had also issued registered certificates both under the VAT and CST Act. According to the petitioner, though they have obtained Registration Certificates, they have not done any business and stopped the same for eight months due to family problems. The same was also intimated to the first respondent by the petitioner. However, the first respondent without passing any order either under Section 22(4) of under Section 27(1) of the TNVAT Act, 2006, has issued the impugned letter dated 16.03.2015 to the second respondent herein to create a charge on the petitioner's property and encumbered the same with sales tax arrears.

4.According to the learned counsel for the petitioner, without passing any order or without arriving at the quantum of tax to be paid by the petitioner, the action of the first respondent in directing the 2nd respondent to create charge is arbitrary and illegal. Aggrieved by the impugned proceedings of the first respondent dated 16.03.2015, this writ petition has been filed.

5. Even though the respondents have not filed any counter, it is contended that the petitioner is trying to alienate the property and evade payment of tax amount due to the respondents. However, the learned counsel appearing for the respondents are unable to state that as to whether any order has been passed under the Revenue Recovery Act before creating any encumbrance. Apprehending that the petitioner may sell the property and ran away, cannot be a ground to ask the Sub Registrar to issue a certificate that the property mentioned in the notice is encumbered with sales tax arrears.

6. Without any orders under the aforesaid two acts and without giving an opportunity of being heard and without analysing whether any amount is due from the petitioner to respondents, the communication of the first respondent to second respondent dated 16.03.2015, which is impugned in the writ petition stating that there is arrears of sales tax and there will be a attachment of property under the Revenue Recovery Act and creating a encumbrance cannot be accepted. As rightly pointed out by the learned counsel for the petitioner, without any order, the petitioner has got no right of appeal before the Appellate Authority. That being the case, without communicating any steps taken either under the VAT Act or CST Act, straight away stating the Sub Registrar to encumber the property with sale tax arrears immediately and a certificate to that effect to be forwarded is not sustainable.

7. Hence, this writ petition is allowed. If the respondents are of the view that there are amounts due from the petitioner, it is open to them to issue notices, call for objections and after affording an opportunity of being heard, it is open to the first

respondent to pass orders on merits and in accordance with law. Writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (J )

/true copy/

Sub Asst. Registrar

smi

To

1.The Assistant Commissioner [CT]
Kangayam.

2.The Sub Registrar
Vellakovil 638 111.

1 cc to M/s. R. Hemalatha, Advocate, Sr. 18271
1 cc to Government Pleader, Sr. 18400
1 cc to Special Government Pleader (T), sr. 18248

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