IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2015

CORAM :

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.14011 of 2013
and
M.P.Nos.1 of 2013 and 1 of 2015

Tvl.S.P.Industries rep. by its
Partner R.Saravanan ... Petitioner

Vs.

The Assistant Commissioner (CT),
Sankari Assessment Circle,
Sankari. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus to call for the records on the file of the respondent in Na.Ka.516/2009/A3 dated 25.04.2013 received on 02.05.2013 and connected proceedings in TIN No.33433225396/08-09 dated 14.05.2009 received on 25.03.2013 and quash the same as being without jurisdiction and authority of law and contrary to the principle of natural justice and further direct the respondent to pass orders afresh after grant of enquiry and opportunity.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader (T)

ORDER

Challenging the order of the respondent dated 25.04.2013, whereby the petitioner's property was sought to be brought for public auction on 30.05.2013 and the connected proceedings in TIN No.33433225396/08-09 dated 14.05.2009, the petitioner has filed the present writ petition.

2.The petitioner is a partnership concern registered under the TNVAT Act, 2006 and also registered under the CST Act, 1956. Though the petitioner was a partnership concern, no effective business was carried on, due to dispute between the partners. While so, the respondent issued direct recovery notice for the assessment year 2008-09 without serving the order of assessment or notice whatsoever. Therefore, the petitioner, by letter dated 10.07.2012, requested the respondent to furnish details regarding assessment and demand, if any made against the petitioner and pre-assessment notice prior to the order of assessment. Inspite of repeated reminders, there was no response and hence the petitioner filed W.P.No.24830 of 2012 seeking a direction to the respondent to consider his representation dated 04.09.2012 and the said writ petition was disposed of on 12.09.2012. Even thereafter, no action has been taken by the respondent. Hence the petitioner sent several letters and finally, approached the respondent in person and on 25.03.2013, the petitioner received the certified copy of the order of assessment, which was signed on 13.07.2012 itself. After receipt of the said order, the petitioner requested the respondent to grant two months time for production of books of accounts.

3.The grievance of the petitioner is that the records, based on which, the impugned order has been passed, were not furnished to him. It is his further grievance that the respondent issued the order of assessment on 25.03.2013 and the date of auction was also fixed on the same day and without even waiting for statutory period of limitation, the respondent has chosen to give another letter dated 25.04.2013, changing the date of auction from 25.03.2013 to 30.05.2013. Aggrieved against the same, the present writ petition has been filed.

4.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

5.The writ petition was admitted on 08.05.2013 and interim stay was granted on condition that the petitioner should pay a sum of Rs.1,00,000/- within a period of four weeks from the date of the said order.

6.Learned counsel appearing for the petitioner would submit that the said conditional order has been complied with and the petitioner may be permitted to file an appeal against the impugned order. The said submission is recorded.

7.The compliance of the conditional order dated 08.05.2013, by the petitioner is not disputed by the learned Additional Government Pleader.

8.In view of the above submission made by the learned counsel appearing for the petitioner, the petitioner is permitted to file an appeal by complying mandatory requirements within a period of two weeks from today and on such filing of the appeal, the authority concerned shall entertain the same without raising any issue in respect of limitation and decide it on merits and in accordance with law, after affording due opportunity of hearing to the petitioner, as expeditiously as possible.

9.Since the conditional order of this Court has been complied with, the respondent is directed to raise the attachment. It is made clear that pending disposal of the appeal, the petitioner shall not encumber or alienate the property in question.

10.With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mmi

To

The Assistant Commissioner (CT),
Sankari Assessment Circle,
Sankari.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.54115
+1cc to the Special Government Pleader(Taxes), S.R.No.54215

W.P.No.14011 of 2013

VSN(CO)
CA(19/10/2015)