BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :12.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD).No.18117 of 2015
and
M.P(MD)No.1 of 2015

M/s.Navarathna Fire Works Industries,
42, P.K.S.A.A. Road,
Sivakasi - 626 189,
Virudhunagar District,
Rep. By its Partner,
S.S.Mohan ...Petitioner

Vs.

Commercial Tax Officer - (CT) -4,
Office of the Assistant Commissioner - 4,
Sivakasi,
Virudhunagar
District. ...Respondent

This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the impugned pre-assessment notice for CST No.829607/2009-10, dated 13.03.2015 for the assessment year 2009-2010 (TIN:33956021814) issued by the respondent and quash the same.

For petitioner : Mr.V.Perumal
For Respondent : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

The Writ Petition has been filed praying for a Writ of Certiorari calling for the records relating to the impugned pre-assessment notice for CST No.829607/2009-10, dated 13.03.2015 for the assessment year 2009-2010(TIN:33956021814) issued by the respondent and quash the same.

2. Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondent.

3. By consent, the Writ Petition itself is taken up for final disposal.

4. In the affidavit it has been averred that the petitioner firm was a joint family property which consists of the petitioner, his wife, his brother S.S.Vijayakumar and his son Pratheep Kumar. There were two other firms in the name and style of M/s.Rathna Fire Works Company and M/s.Rathna Fire Work Industries, in which also the above said persons are partners. The son of the petitioner's brother Pratheepkumar was a

commission agent for the products sold from the above said three concerns all over India. He is liable to produce "C" Form from the purchasers. He failed to produce the Sales Tax from 2007-2008 onwards. Under such circumstances, a oral partition had taken place between the parties and the same was registered on 30.12.2009. As per the partition deed, M/s.Rathna Fire Works Company and M/s.Navarathna Fire Works Industries were allotted to the petitioner's share. M/s.Rathna Fire Works Industries was allotted to the brother of the petitioner and he accepted to pay all the statutory dues and other liabilities of the firms, which were allotted to the petitioner. But, the brother of the petitioner did not act as per the terms of partition and failed to pay the statutory dues and other liabilities that were attached to the firms allotted to the petitioner. Hence, the petitioner filed O.S.No.169 of 2011 for declaration that the petitioner Concern is not liable for the dues payable to the respondent as per the terms of partition. The said suit was dismissed by the trial Court on the ground that mandatory injunction cannot be granted against the respondent. Aggrieved by the same, the petitioner preferred an apple before the Sub-Court, Sivakasi and the same is pending as on date. Under such circumstances, the respondent had issued the pre-assessment notice, dated 13.03.2015 to submit declaration form with regard to the inter-state sales not covered by "C" Form. The petitioner is not aware of the purchasers of the product manufactured in the petitioner's concern before partition as the sales of crackers manufactured in the three units were carried on by the son of the petitioner's brother, who acted as a commission agent. Hence, the petitioner has come forward with the present Writ Petition with a prayer to quash the pre-assessment notice issued by the respondent.

5. Heard the submissions made on either side and perused the materials available on record.

6. In my considered opinion, the respondent has issued only a pre-assessment notice and the petitioner can very well raise his objection before the respondent. In view of the same, this Court is constrained to pass the following Order.

The petitioner is permitted to file his objection to the pre assessment notice for CST No.829607/2009-10, dated 13.03.2015 for the assessment year 2009-2010(TIN:33956021814), before the respondent within a period of two weeks from the date of receipt of a copy of this order and on filing such objection, the respondent is directed to consider the same and pass an appropriate orders on merits and in accordance with law, by affording an opportunity of hearing to the petitioner, within a period of four weeks thereafter.

With the above direction, the Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

/TURE COPY/

Sub Assistant Registrar

pm

To
Commercial Tax Officer – (CT) -4,
Office of the Assistant Commissioner – 4,
Sivakasi, VIRUDHUNAGAR DISTRICT

+1 cc to MR.V.PERUMAL, ADVOCATE, SR NO: 60470

+1 CC to M/S.SPL.GOVT.PLEADER, SR NO: 60754

JAM /26.10.2015/ SKS-RR/3P-4C

W.P(MD).No.18117 of 2015
12.10.2015