IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.17732 of 2014
and
M.P.No.1 of 2014

M/s.Maadhu Traders,
rep.by its Proprietor,
Mr.Madheswaran
No.4/172 Nachinirampatti H,
Thottambatty Post,
Harur-636 903 ... Petitioner

vs.

1.The Assistant Commissioner(CT)
Enforcement(North),
Chennai-600 006.

2.The Joint Commissioner(CT),
Enforcement-I, Chennai.

3.The Commercial Tax Officer,
Harur Assessment Circle,
Harur ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records of the first respondent relating to the surprise inspection conducted at the petitioner's place of business between 18.6.2014 to 21.06.2014, quash the sworn statement dated 21.06.2014 recorded therein and further direct the third respondent not to implement the inspection results for the purpose of assessment/reassessment proceedings of the petitioner herein.

For Petitioner :Mr.P.V.Sudhakar
For Respondents :Mr.Manokaran Sundaram,A.G.P.

ORDER

Heard Mr.P.V.Sudhakar, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondents and with the consent of either parties, the writ petition itself is taken up for final disposal.

2. In this writ petition, the petitioner has questioned the surprise inspection report and the statement recorded from them. The Contention of the petitioner is that the first respondent has absolutely no jurisdiction to conduct such surprise inspection or record statement or seize records.

3. The learned counsel for the petitioner referred to Section 48 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act) and submitted that there is no power conferred on the officer in the rank of a Assistant Commissioner and therefore, the entire inspection and the statement recorded, during the course of inspection, is illegal, without jurisdiction and cannot be relied on. Further, the learned counsel referred to Section 65 of the TNVAT Act and submitted that the power can be conferred on the Assessing Officer and admittedly, the petitioner is not carrying on business within the jurisdiction of the first respondent, nor they are registered as a dealer within the said assessment circle. The learned counsel also referred to Rule 20 of the TNVAT Rules and submitted that the said Rule, read along with Section 48 of the Act, does not empower an officer in the rank of a Assistant Commissioner to conduct such inspection or record statement.

4. The learned counsel also referred to a Notification issued by the Government in exercise of the powers under Sections 41 and 41A of the erstwhile Tamil Nadu General Sales Tax Act with regard to the powers of the officers to inspect account books etc. It is submitted that the said provision is in pari materia with Section 65 of the TNVAT Act and the Notification would very will apply to the provisions of the TNVAT Act and thus, the entire proceedings initiated by the first respondent is wholly without jurisdiction.

5. The learned Additional Government Pleader, based on the written instructions, submitted that in terms of Section 48 of the TNVAT Act, the Assistant Commissioner shall perform the functions conferred on him throughout the State and the other officers shall perform their functions within such local limits as the Government or any authority or officer empowered in this behalf may assign to them.

6. It is also submitted that by virtue of the above provision, the Commissioner of Commercial Taxes is conferred with the authority throughout the jurisdiction of Tamil Nadu and he is entitled to delegate his powers and he has authorised the Joint Commissioner (CT), Enforcement, Chennai, to conduct surprise inspection of M/s.Maadhu Traders, Naachanapatti H, Thottambatty, Harur and the authorisation states that authorisation is given to send a team of officials to conduct surprise inspection of M/s.Maadhu Traders Group of Companies, Harur. Authorization is also given to engage officials from other enforcement divisions, as may be required.

7. Thus, the learned Additional Government Pleader submits that the officer, who conducted the Inspection, recorded the statement and seized the records, is vested with the powers.

8. After hearing the learned counsels for the parties and on perusing the materials placed on record, at the very out set, it has to be pointed out that writ of certiorari cannot be issued, quashing the inspection report or the seizure mahazar or the statement recorded from the dealer. The petitioner would state that the officer does not posses the jurisdiction to record the statement or prepare the inspection report or seize the documents. But however, it appears that the documents were seized from the place of business of the petitioner. Therefore, if the petitioner has any reservations on the statement given by them before the Enforcement Officials, it is always open to the petitioner to raise contention before the assessing officer and it is a settled legal position that the assessing officer, while completing the assessment, cannot solely be guided by the statement recorded by the Enforcement Officials. Therefore, the petitioner need not have any apprehension that their rights and remedies will stand foreclosed, if they allow the impugned inspection report and the statement to stand. It is always well open to the petitioner to contest the merits of the matter, when the assessing officer takes up the issue. Even if in a case the petitioner states that the record does not belong to their company or organisation that point also could be canvassed before the assessing officer. Since the petitioner has raised the question of jurisdiction and the respondents have stated that there is delegation of power, this Court is not inclined to quash the inspection report or the statement, at this juncture. This issue relating to jurisdiction is left open to be canvassed by the petitioner as and when notice is issued by the assessing officer.

9. With the above observations, the writ petition stands disposed of. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msk

To

1.The Assistant Commissioner(CT)
Enforcement(North),
Chennai-600 006.

2.The Joint Commissioner(CT),
Enforcement-I, Chennai.

3.The Commercial Tax Officer,
Harur Assessment Circle,
Harur

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