IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26052 of 2016 &
W.M.P.No.22362 of 2016

TVL. Alakapuri Bar
rep. by its Manager,
Mr.K.Anil Kumar,
The Nilgiris No.109,
Ettines Road [PETITIONER]

Vs

The Commercial Tax Officer
Uthagai (South) Assessment Circle
Uthagaimandalam. [RESPONDENT]

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records pertaining to the impugned notice issued by the respondent in TIN:33102601237/2014-15/A3, dated 18.07.2016, and quash the same.

For Petitioner : Mrs.Lakshmi Sriram

For Respondent : Mr.S.Manokaran Sundaram
Additional Government Pleader

O R D E R

Heard Mrs.Lakshmi Sriram, learned Counsel appearing for the petitioners and Mr.S.Manokaran Sundaram, learned Additional Government Pleader, accepting notice on behalf of the respondent and with the consent of learned counsel appearing on either side, the writ petition itself is taken up for final disposal.

2.The petitioner is registered dealer on the file of the respondent Department. The petitioner in this Writ Petition has challenged the notice dated 18.07.2016, in and by which, the respondent has directed the petitioner to pay a sum of Rs.4,30,601/-, being arrears of sales tax for the period from 01.04.2012 to 31.03.2015, along with penalty of Rs.7,95,902/-.

In the impugned notice, it has been stated that as the petitioner's application for grant of waiver from the tax demand was rejected by the Government by an order dated 11.07.2016, the amount has to be paid within a period of three days.

3.The learned counsel for the petitioner submitted that no assessment proceedings were initiated against the petitioner and the petitioner is unable to avail the appellate remedies available under the provisions of the Act. Therefore, it is submitted that the respondent may be directed issue a notice and pass an order and thereafter, the petitioner will workout their remedies in the manner known to law.

4.The case as projected by the petitioner cannot be accepted. This is substantiated by the following reasons: The petitioner along with similarly placed persons challenged the Government order in G.O.Ms.No.47, Commercial Taxes and Registration (b-1) department dated 27.03.2012, in an by which the Government amended the Second Schedule to introduce levy of tax at 14.5%, at the 3rd point of sale to its customers for IMFL manufactured within the State and at the 2nd point of sale of IMFL manufactured outside the State. It is stated that in the batch of cases, the Madurai Bench of this Court had granted an interim order and the petitioner had also the benefit of the said interim order. However, the writ Petitions were dismissed by a common order dated 31.03.2015. As against which the petitioner and others have filed Special Leave Petitions before the Hon'ble Supreme Court and the matter is pending in S.L.P.Nos.2911 of 2016 etc. batch. However, no interim order has been granted by the Hon'ble Supreme Court.

5.It is seen that after the batch of cases were dismissed by this Court on 31.03.2015, it appears that the petitioner had issued five cheques, towards their tax liability and those cheques were dishonoured on account of 'insufficient funds' and a notice in that regard was issued to the petitioner dated 29.03.2016, by which, the total tax amount determined was Rs.12,26,503/-, being the amount covered under the Cheque which were dishonoured together with penalty under section 27(3) of the TNVAT Act, 2006, which comes to Rs.7,95,902/-. The petitioner instead of complying with the said demand and paying the amount covered by the cheques which were dishonoured, along with penalty chose challenge the said notice before this Court by filing a Writ Petition in W.P.No.13520 of 2016. The Court by an order dated 12.04.2016, without going into the correctness of the notice dated 29.03.2016, granted liberty to the petitioner to approach the Government for waiver of tax. Accordingly, the said Writ Petition stood disposed of and the Court granted an order of status quo till the order is passed by the first respondent on the representation to be given by the petitioner. Pursuant to such liberty being granted, the petitioner filed an Application before the Government, seeking waiver.

6.Thus, it is clear that the petitioner had accepted the liability and only if liability is accepted, the question of seeking waiver would arise. Be that as it may, the Government vide order dated 30.06.2016, rejected the petitioner's request for waiver. The petitioner has not questioned the said order dated 30.06. 2016, but, has come forward with this Writ Petition, challenging the notice which is consequential upon the rejection of the waiver application.

7.In the light of the facts stated above, the petitioner has not made out any case for interference in the impugned notice. Accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpa

To

The Commercial Tax Officer,
Uthagai (South) Assessment Circle,
Uthagaimandalam.

+1cc to Mr.Lakshmi Sriram, Advocate Sr.42876
+1cc to the Special Government Pleader Sr.42594

W.P.No.26052 of 2016

pvs[co]
srg 16/08/2016