IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.26606 of 2016

and W.M.P.No.22796 of 2016

M/s. Aadidev Enterprise,
Rep. By its Partner, Jeevakanthan,
No.3, Cheran Street, Muthamizh Nagar,
Thiruninravur, Tiruvallur .. Petitioner

Vs.

The Deputy Commerial Tax Officer,
Pattarawakkam Circle,
No.5 High Court Colony, Villivakkam,
Chennai - 600 045 .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records of the respondent's order dated 01.02.2016 made in TIN No.33291369766 and to quash the same.

For Petitioner : Mrs. G.Thilakavathi

For Respondent : Mr. S.Kanmani Annamalai, AGP.,

O R D E R

Heard Mrs.G.Thilakavathi, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondent. By consent of the learned counsel for both sides, the Writ Petition is taken up for final disposal, at the admission stage itself.

2. In this writ petition, the petitioner challenges the order of assessment, dated 01.02.2016, under the provisions of the Central Sales Tax Act, for the year 2014-15. The only ground on which the impugned order has been challenged is, by contending that the pre- assessment notice was not served on the petitioner in the place of business and that the place of business had been acquired under the National High Ways Act.

3. In order to ascertain the correctness of the said statement, this Court, on 29.07.2016, had directed the learned Additional Government Pleader to get necessary instructions, in this regard.

4. Today, the learned Additional Government Pleader has produced the original files relating to the said fact. A perusal of the said records would reveal that the pre-assessment notice, dated 15.10.2015, was sent to the petitioner's address, by Registered Post Acknowledgment Due, and it has been sent not only to the (petitioner) firm's address, but also to Mr.Jeevakanthan, who is one of the partners of the company and who is the deponent to the affidavit filed in support of this writ petition. Apart from that, the original file shows that there is another noticee (partner of the petitioner-firm) who has also received the said notice. In fact, the assesses had received the notices, as could be seen from the postal Acknowledgment card. For the notice sent to Mr.R.Jeevakanthan one person has signed and received the same and for Mr.V.Ramakrishnan, one person, by name, Ms.V.Kanthimani, has received and for the firm, on behalf of the company, someone has signed on behalf of assessee and it is not very clear as to who has received the notice. However, the fact remains that the partners have received the said notices. Therefore, the contention that no prior notice was issued before completing the assessment is not established factually.

5. However, this Court is of the view that the petitioner should not be left without any remedy and should be entitled to contest the matter on merits. In the light of the above, the petitioner is directed to deposit 15% of the disputed tax, before the respondent, within a period of four weeks from the date of receipt of a copy of this order. If the same is done, the petitioner is entitled to treat the impugned assessment order, as the show cause notice, and submit their objection(s) within a period of two weeks, thereafter. On receipt of the said objection(s), the respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law. The deposit effected by the petitioner shall be without prejudice to the rights of the petitioner and subject to the orders, which shall be passed by the respondent, in terms of the above directions.

6. Since this Court has directed the impugned proceedings to be treated as the show cause notice, no further action shall be initiated by the respondent, for recovery of the balance amount of tax and penalty, which shall abide by the fresh orders to be passed in terms of the above directions.

7. This writ petition is disposed of accordingly. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commerial Tax Officer,
   Pattarawakkam Circle,
   No.5 High Court Colony, Villivakkam,
   Chennai - 600 045.

+1cc to Mrs.G.Thilakavathi, Advocate Sr.43898
+1cc the Special Government Pleader Sr.44278

Writ Petition No.26606 of 2016
and W.M.P.No.22796 of 2016

rsy[co]
srg 24/08/2016