IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.27012 of 2016
and
W.M.P.No.23210 of 2016

M/s. Sri Balaji Agencies, Represented by its Partner,
No.1/96, NH-47, Salem Bye-pass Road,
Komarapalayam ... Petitioner

Vs.

1. The Assistant Commissioner of Commercial Taxes,
Office of the ACCT,
Sankagiri Assessment Circle, Sankagiri

2. The Appellate Deputy Commissioner CT (FAC),
Office of the ADC CT (FAC),
Commercial Tax Building, Brough Road,
Erode ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in impugned distraint order No.1862/2015/A3/ P.Sa.No.33703223647/2006-07 to 2014-15, dated 19.07.2016, quash the same as it is against first proviso to Section 51 (4) of the TNVAT Act, 2006 and second proviso to Section 42 (3) of the TNVAT Act, 2006 and to direct the first respondent not to proceed further, in terms of the impugned proceedings and further direct the second respondent to hear the stay petition.

For Petitioner : Mrs. Radhika Chandrasekhar
for Mr.K.Vaitheeswaran

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

O R D E R

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

2. The petitioner, in this writ petition, challenges the destraint proceedings, issued by the first respondent for recovery of the entire tax and penalty, in terms of the assessments made on the petitioner for the year 2006-07 to 2014-15, under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. It is not in dispute that, as against the orders of assessment, the petitioner preferred appeals before the second respondent, after depositing 25% of the pre-deposit amount and thereafter, the petitioner has paid further 25% and in all, the petitioner paid 50% of the disputed tax, for the assessment years, totaling a sum of Rs.11,02,163/-, as against the tax demand of Rs.22,64,517/-, for all the seven assessment years. Since such appeals are still pending and no orders were passed, destraint proceedings have been initiated. The petitioner has filed another / fresh stay petition, before the second respondent, on 28.07.2016, along with an early hearing petition and the same are also pending.

4. Considering the fact that already the petitioner has paid 50% of the disputed tax, totaling a sum of Rs.11,02,163/-, for all the seven assessment years, this Court is of the view that the demand for further payment should remain stayed, till the appeals are heard and disposed of.

5. This Court was inclined to issue direction to the second respondent to dispose of the appeals' petitions, at an early date. However, the learned Additional Government Pleader, on instructions, would submit that, due to pressure of work, it will take some more time for the second respondent to dispose of the appeals, as the appeals were filed only in August 2015.

6. Considering the facts and circumstances of the case, this writ petition is allowed and the impugned order is quashed. In the light of the fact that already 50% of the disputed tax has been paid by the petitioner, the remaining amount of tax and penalty, as assessed on the petitioner, shall remain stayed, till the disposal of the appeals by the second respondent, subject to the condition that the petitioner shall furnish bond for the remaining amount of the disputed tax. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Assistant Commissioner of Commercial Taxes,
   Office of the ACCT,
   Sankagiri Assessment Circle,
   Sankagiri.

2. The Appellate Deputy Commissioner CT (FAC),
   Office of the ADC CT (FAC),
   Commercial Tax Building, Brough Road,
   Erode

+1cc to Mr.K.Vaitheeswaran, Advocate, S.R.No.44120
+1cc to the Special Government Pleader(T), S.R.No.44275

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RSY(CO)
CA(18/08/2016)