IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 13.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Writ Appeal No.384 of 2016

and CMP No.5621 of 2016

M/s.D.S.M.Agencies,
Rep. by its Partner,
No.9, 15th Cross Street,
Shastri Nagar, Adyar,
Chennai-600 020. ... Appellant/Petitioner

-vs-

The Commercial Tax Officer,
Adyar II Assessment Circle,
Chennai - 600 020 ... Respondent/Respondent

Writ Appeal filed against the order dated 16.12.2015 in W.P.No.18619 of 2004.

Writ Petition Under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the respondent in TNGST/01961166/2002-2003, and quash the pre-assessment notice, dated 31.05.2004, as illegal.

For Appellant : Mr.B.Raveendran
For Respondent: Mr.Hari Babu
Additional Govt. Pleader (Tax)

JUDGMENT

[Judgment of the Court was made by S.MANIKUMAR, J.]

Challenge in this writ appeal is to an order made in W.P.No.18619 of 2004 dated 16.12.2015 by which, the learned single Judge, while declining to issue a writ of certiorari sought for against the pre-assessment notice dated 31.05.2004, directed the appellant/petitioner to submit his reply to the aforesaid notice, within a period of three weeks from the date of receipt of the copy of the order and that the Commercial Tax Officer, Adyar II Assessment Circle, Chennai, respondent herein has been directed to pass orders, on merits.

2. In the memorandum of appeal, the appellant has raised several grounds. However, before adverting to the same, when we posed a question to Mr.B.Raveendran, learned counsel for the appellant, as to whether the impugned pre-assessment notice, subject matter of writ petition, is within the jurisdiction of the respondent, the answer was in the affirmative. When the competence and jurisdiction of the authority who had issued the pre-assessment notice, subject matter of the writ petition, is admitted, prima facie we are of the view that there is no need to go into the merits of challenge.

3. Added further, Mr.Hari Babu, learned Additional Government Pleader (Tax) also submitted that as against the impugned show cause notice, writ is not maintainable and in that context, also took us to an order made in W.A.No.1025 of 2006 dated 10.08.2006 extracted, in the counter affidavit filed by the Commercial Tax Officer, Adyar II Assessment Circle, Chennai. Courts have consistently held that in taxing statutes, ordinarily, writ petitions should not be entertained, unless and until, such notice is without jurisdiction. Impugned show cause notice dated 31.05.2004 shows that there was an inspection conducted in the premises of the appellant and certain irregularities have been noticed. When the respondent, by the impugned notice has called upon the appellant/petitioner to submit his objections within a period, we are of the view that the same has to be done, so as to enable the authority to make an assessment of the turnover and the tax to be paid. Courts cannot take the role of the assessing officer and that is why legislative has conceived and decided to have an hierarchy of officials, to verify both on law and facts and further provided remedies.

4. In the light of the above discussion, there is no material irregularity in the impugned order, warranting interference. Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

5. After the dismissal of the writ appeal, Mr.B.Raveendran, learned counsel for the appellant submitted that adequate time be granted to the appellant to submit objections to the pre-assessment notice dated 31.05.2004.

6. Placing on record the above submission, we deem it fit to grant four weeks time to the appellant, to submit objections, from today. It is made clear that if the objections are not submitted within the abovesaid period Commercial Tax Officer, Adyar II Assessment Circle, Chennai, the respondent herein, is at liberty to proceed in accordance with law. If objections are submitted, within the aforesaid period, the respondent is

directed to pass orders on merits and in accordance with law, within a period of four weeks, thereafter.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ars
To

The Commercial Tax Officer,
Adyar II Assessment Circle,
Chennai - 600 020.

+1cc to Mr.B.Raveendran, Advocate Sr.31827
+1cc to Special Government Pleader Sr.32574

W.A.No.384 of 2016

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srg 27/06/2016