IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23235 of 2004
and
W.M.P.No.28116 of 2004

M.Mohanraj
Indu Cosmetics,
Cuddalore - 1. ..Petitioner

vs.

1.The Assistant Commissioner (CT),
Cuddalore.

2.The Deputy Commercial Tax Officer,
Cuddalore Town.

3.The Revenue Inspector,
Ariyankuppam,
Pondicherry. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the second respondent herein in C.1.4658/95 dated 13.02.1998 and quash the same as illegal, unlawful and unconstitutional.

For Petitioner : Mr.A.Ravichandran
For Respondents : Mrs.Kanmani Annamalai
Additional Government Pleader

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O R D E R

Heard Mr.A.Ravichandran, learned counsel for petitioner and Mrs.Kanmani Annamalai, learned Additional Government Pleader, for respondents.

2. In this writ petition, the petitioner has questioned the notice issued in Form I dated 29.07.2004 which is a distraint notice calling upon the petitioner to pay the entire arrears of tax. The petitioner contended that the entire revision of assessment is barred by limitation in terms of Section 16 of the Tamil Nadu General Sales Tax Act, 1959, as the assessment should

have been completed within a period of five years from the expiry of the year to which the tax relates and the period would end by 31.03.1997 and no proceedings were initiated prior to that date. It is not in dispute that the notice issued to the petitioner by the Assessing Officer was returned within an endorsement 'refused'. Therefore, it is to be seen as to whether the authority should follow the procedure prescribed under Rule 52(1)(d) of the Tamil Nadu General Sales Tax Rules. The decision of the Tamil Nadu Taxation Special Tribunal in Jothi Machine Works (P) Ltd. v. Deputy Commercial Tax Officer, Singanallur Assessment Circle [2001 (124) STC 485], deals with the contingency where the notice sent to the dealer is returned with an endorsement 'left' or 'not claimed'. However, the various modes of service as contemplated under Rule 52 of the Tamil Nadu General Sales Tax Rules would be attracted only if the notice is returned as 'not claimed' or 'left'. In the instant case, the notice was refused by the dealer. It is settled legal position that refusal to accept registered post is deemed to be proper service of notice on the dealer. Therefore, the procedure under Rule 52 of the Tamil Nadu General Sales Tax Rules, would not stand attracted in the instant case. Therefore, there is no error in the proceedings initiated by the respondents.

In the result, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gm

To

1.The Assistant Commissioner (CT),
Cuddalore.

2.The Deputy Commercial Tax Officer,
Cuddalore Town.

3.The Revenue Inspector,
Ariyankuppam,
Pondicherry.

+1 cc to the special government pleader taxes high court madras sr 55332

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