IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.06.2016

PRONOUNCED ON: 12 .07.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.9379 of 2016 & Crl.M.P. Nos.4837 and 4838 of 2016

S. Kathiresan Petitioner/Accused

vs.

The Additional Deputy Commercial
Tax Officer – IW
Intelligence Wing
Commercial Taxes Road
100 Feet road
Puducherry Respondent/Complainant

Criminal Original Petition filed under Section 482, Cr.P.C., seeking to call for the records in C.C. No.220 of 2009 on the file of the Judicial Magistrate Court No.1, Pudhucherry and quash the same.

For petitioner Mr. S. Ravee Kumar

For respondent Mr. M.R. Thangavel
Additional Public Prosecutor - Pondy

ORDER

In this case, the petitioner is challenging the prosecution launched by the Additional Deputy Commercial Tax Officer – IW, Intelligence Wing, Commercial Taxes Department, Pudhucherry in C.C. No.220 of 2009 before the Judicial Magistrate Court No.1, Puducherry for offences under Section 49(2)(b), Section 49(2)(a) and Section 27(2)(b) read with Section 27(3) of the Pondicherry General Sales Tax Act, 1967 read with Section 81 of the Puducherry Value Added Tax Act, 2007 and Puducherry General Clauses Act, 1965.

2 The petitioner is a dealer of petroleum products and runs a business in the name and style of Sri Rajeswari Agencies in Puducherry. It is the case of the prosecution that for the financial year 2006-2007, the petitioner had disclosed a total taxable turnover of Rs.9,75,21,400.66, whereas, the materials collected by the Department from oil companies from whom the petitioner has made purchases disclosed that the total taxable

turnover was Rs.11,07,62,094.10 and the tax due thereon was fixed at Rs.1,32,91,451/- and after deducting the tax paid by the accused, the balance tax was determined at Rs.23,66,554/-. After issuance of show cause notice to the petitioner, the final assessment order was passed as early as on 10.12.2008 and a demand notice was also issued to him. Since he did not make payment, the present prosecution has been launched.

3 In this quash petition, it is the contention of the petitioner that the complaint is barred by statute, inasmuch as the Pondicherry General Sales Tax Act, 1967, has been repealed.

4 It is true that the Pondicherry General Sales Tax Act, 1967, has been repealed by the Pudhucherry Value Added Tax Act, 2007 in which Section 81 – Repeal and Savings provision saves prosecution of persons who have violated the repealed law.

5 The learned counsel for the petitioner relied upon an unreported judgment dated 13.06.2011 of this Court in T.K. Raghavan and another vs. Commercial Tax Officer, Mahe, where a similar prosecution appears to have been quashed.

6 The learned Additional Public Prosecutor (Pondy) submitted that Department has appealed to the Supreme Court as against the said judgment of this Court and the same is pending.

7 Be that as it may, I am unable to persuade myself to agree with the submission made by the learned counsel for the petitioner, because, the date of initiation of the prosecution is a question of fact, which has to be determined only by the Trial Court. That apart, the trial in this case has begun with the examination of P.W.1 on 25.06.2015. When once trial has begun, it is not desirable to interdict the prosecution and quash the same.

In the result, this Criminal Original Petition is dismissed as being devoid of merits. Connected Crl.M.Ps. are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Judicial Magistrate No.1
Pudhucherry

2 The Additional Deputy Commercial Tax Officer - IW
Intelligence Wing
Commercial Taxes Road
100 Feet road Puducherry

3 The Public Prosecutor(Pondy)
High Court of Madras
Chennai 600 104

+ 1 c to Mr.S. Raveekumar, Advocate Sr.39122

Crl.O.P. No.9379 of 2016

MSM(CO)
Eu 27.7.16