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.9380 of 2016 & Crl.M.P. Nos.4839 and 4840 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.41 of 2010 on the file of the Judicial Magistrate Court No.1, Puducherry 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, Puducherry in C.C. No.41 of 2010 before the Judicial Magistrate Court No.1, Puducherry for offences under Section 59(2)(b), Section 59(2)(a) and Section 37(3)(b) read with Section 37(4) of the Puducherry Value Added Tax Act, 2007 and for the offences under Rules 14 and 16 of the Central Sales Tax (Pondicherry) Rules, 1967 and also under Sections 409 and 422, IPC.

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 2007-2008, the petitioner had disclosed a total taxable turnover of Rs.4,95,44,132/-, whereas, the materials collected by the Department from the oil companies from whom the

petitioner has made purchases disclosed that the total taxable turnover was Rs.6,13,34,653.78 and the tax due thereon was fixed at Rs.76,66,831/- and after deducting the tax paid by the accused, the balance tax was determined at Rs.20,89,841/-. The petitioner was issued with a show cause notice and after giving adequate opportunity, the assessment order was passed on 15.09.2009 and a demand notice was issued to the petitioner.

3 It is contended by the learned counsel for the petitioner that no prosecution can be launched before affording an opportunity to the petitioner to compound the offence. It is further contended that by virtue of Section 37(3) of the Puducherry Value Added Tax Act, 2007, prosecution cannot be launched during the pendency of a revision or appeal.

4 I am unable to persuade myself to agree with this submission made by the learned counsel for the petitioner, inasmuch as Section 37(3), ibid, provides for recovery proceedings and that has nothing to do with Section 59, ibid, which speaks of offences and penalties. The petitioner is prosecuted for offences under Section 59(2)(a) and 59(2)(b), ibid, which reads as follows:

> "59. Offences and Penalties:
>
> (2) Any person, who, --
>
> a wilfully submits an untrue return, or, not being already an Assessee under this Act, fails to submit a return as required by the provisions of this Act or the Rules made thereunder, or
>
> b fraudulently evades the payment of any tax assessed on him or any fee or other amount due from him under this Act."

5 This aspect has already been gone into by this Court in the judgment dated 05.10.2015 in Crl.O.P. Nos.22350 of 2008, wherein, this Court refused to quash the prosecution. Further, since there are sufficient materials for the prosecution to proceed as against the petitioner, the same cannot be quashed in the light of the law laid down by the Supreme Court in State of Haryana vs. Bhajan Lal, [1992 Supp (1) SCC 335].

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
Puducherry

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

3 The Public Prosecutor
High Court of Madras
Chennai 600 104

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

Crl.O.P. No.9380 of 2016

MSM(CO)
Eu 27.7.16