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.9383 of 2016 & Crl.M.P. Nos.4845 and 4846 of 2016

S. Kathiresan ... Petitioner

vs.

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

Criminal Original Petition filed under Section 482, Cr.P.C., seeking to call for the records in C.C. No.325 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.325 of 2010 before the Judicial Magistrate Court No.1, Puducherry for offences under Rules 14 and 16 of the Central Sales Tax (Pondicherry) Rules, 1967 and 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 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/-. The petitioner was issued with a show cause notice and after giving adequate opportunity, the assessment order was passed on 10.12.2008 and a demand notice was issued to the petitioner.

3 In this prosecution, the allegation against the petitioner is as follows:

> "As per Rule 14(10) of the Central Sales Tax (Pondicherry) Rules, 1967, every registered dealer shall submit for every quarter an extract of Form – 8 Register required to be maintained by him for every year. Thus sub-rule (10) of Rule 14 of the Central Sales Tax (Pondicherry) Rules, 1967, casts the responsibility on the accused to submit the extract in Form – 8 on quarterly basis for the utilization of declaration Form-C. Whereas the accused having issued the declaration of Form C and having purchased petroleum products from M/s. Indian Oil Corporation Ltd., Chennai, deliberately failed to comply with the requirement of law. Thus, the accused disobeyed the provisions of law and failed to submit such extract of Form-8 Register to complainant department, disclosing his actual purchases for the year 2006-07 with a view to defraud the Government revenue. Thus, the accused herein by not complying with the requirements of law suppressed the material fact of actual purchases made from M/s. Indian Oil Corporation Ltd., Chennai. The non-compliance of the law on the part of accused herein is nothing but a premeditated design to evade the tax. Failure to comply with the provisions of sub-rule (10) of Rule 14 on the part of the assessee amounts to breach of such rules and the breach of rules committed constitutes an offence under Rule 16 of the Central Sales Tax (Pondicherry) Rules, 1967 and the Accused is liable for conviction and punishment as per Rule 16 of the Central Sales Tax (Pondicherry) Rules, 1967."

4 In other words, the petitioner has been prosecuted for not maintaining various statutory registers that they are required to maintain under the Rules framed under the parent Act. Since the complaint discloses prima facie materials for the trial to proceed, 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

+1cc to Mr.S. Raveekumar, Advocate, S.R.No.39122

MSM(CO)
EU(27/07/2016)

Crl.O.P. No.9383 of 2016