BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.A.(MD) No.1210 of 2016

C.R.Tamilvanan ... Appellant / Petitioner

-vs-

1.The Commercial Tax Officer (Additional)
Dindigul Rural Assessment Circle
Dindigul
O/o.The Commercial Tax Officer
Court Road, Dindigul

2.M/s.K.M.Exports
No.1854, 1st Floor
11th 'A' Main
39th Cross 4th "T" Block, Jayanagar
Bangalore-560 011
rep.by its Proprietor

3.M/s.Rashi Granite Export India (P) Ltd.
No.117, 118, Bommasandara Industrial Area
4th Phase, Hosur Main Road
Bangalore, Karnataka, India
rep.by its Proprietor ... Respondents / Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 01.07.2016 made in W.P.(MD) No.11699 of 2016.

Prayer in WP(MD). 11699/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the 1st respondent to collect the C/H Forms from the 2nd and 3rd respondents for the period of 2011 - 2012 and 2012- 2013.

For Appellant : Mr.K.C.Ramalingam

For Respondents : Mr.R.Karthikeyan, A.G.P., for R1

J U D G M E N T

[Judgment of the Court was made by **M.SATHYANARAYANAN, J.**]

It is the case of the appellant / writ petitioner that despite the supply of granite materials during the year 2012-2013 to the second respondent herein, he did not issue 'C' / 'H' forms and on account of the same, the appellant / writ petitioner could not submit Form 'H' declaration along with details of bills before the first respondent and hence he came forward to file W.P.(MD) No.11699 of 2016 seeking direction to the first respondent to collect the 'C' / 'H' forms from the respondents 2 and 3 for the period of 2011-2012 and 2012-2013.

2. The Single Bench of this Court, after hearing the submissions of the learned counsel for the petitioner and the learned Additional Government Pleader, dismissed the writ petition observing that it is the duty of the petitioner to arrange for 'C' / 'H' forms from the private respondents in time and that the first respondent has no role to play in the affairs between the petitioner and the private respondents. The *inter se* dispute between the petitioner and the private respondents cannot be adjudicated by invoking Article 226 of the Constitution of India. Hence, this writ appeal.

3. The learned counsel for the appellant would submit that there is an *inter se* dispute between the appellant and the private respondents and a case under Section 138 N.I.Act is also pending between them and hence the first respondent ought to have persuaded the respondents 2 and 3 to issue 'C' / 'H' forms to the appellant so as to enable him to avail concession / benefit. Hence, the learned counsel prays for interference of this Court.

4. Per contra, Mr.R.Karthikeyan, learned Additional Government Pleader, who takes notice on behalf of the official respondent, invited our attention to Section 6A of the Central Sales Tax Act, 1956 and submitted that it is for the appellant to collect 'C' / 'H' forms from the private respondents and that the first respondent cannot interfere with the private dispute between the appellant and the respondents 2 and 3 and hence, the learned Single Judge has rightly dismissed the writ petition. Therefore, the learned Additional Government Pleader prays for dismissal of the writ appeal.

5. This Court has carefully considered the rival submissions and perused the materials produced.

6. It is relevant to extract Section 6A(1) of the Central Sales Tax Act, 1956 and it reads as follows:

> "6A(1). *Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of*

such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale."

7. As rightly contended by the learned Additional Government Pleader appearing for the first respondent, the first respondent being a statutory authority cannot interfere with the private dispute between the appellant and the respondents 2 and 3 and it is for the appellant to persuade the respondents 2 and 3 to issue 'C' / 'H' forms. In the absence of the statutory obligation cast upon the appellant to collect 'C' / 'H' forms from the respondents 2 and 3, the writ petition is not maintainable. The learned single Judge has taken note of the said fact and rightly arrived at the conclusion to dismiss the writ petition. In the considered opinion of this Court, the reasons assigned by the learned Judge, while dismissing the writ petition, are in order and do not warrant interference by this Court.

8. In the result, the writ appeal is dismissed confirming the order, dated 01.07.2016, passed in W.P.(MD) No.11699 of 2016. No costs.

Sd/-

Assistant Registrar (CS-1)

/True Copy/

Sub Assistant Registrar

krk

To:

The Commercial Tax Officer (Additional),
Dindigul Rural Assessment Circle,
Dindigul,
O/o.The Commercial Tax Officer,
Court Road, Dindigul.

+1 cc to Mr.K.C.RAMALINGAM ,Advocate, Sr.No: 50499

+1cc to M/S Special Government Pleader, Sr No. 50942

JAM/SS2/22.09.16/ 4P-4C

W.A.(MD) No.1210 of 2016
06.09.2016