BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.02.2016

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P(MD)No.2310 of 2016
and WMP(MD)No.2036 of 2016

D.Ramkumar ... Petitioner

Vs.

The Commercial Tax Officer,
Woraiyur Assessment Circle,
Trichy - 3. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent herein in impugned distraint order No.36/16/A-3, dated 07.01.2016 and quash the same which is against second proviso to Section 58 of the TNVAT Act, 2006 and second proviso to Section 42(3) of the TNVAT Act, 2006 and direct the respondent not to proceed further in terms of the impugned proceedings.

For Petitioner : M/s.Radhika Chandra Sekhar
For Respondent : Mr.R.Karthikeyan
Additional Government Pleader,
takes notice

ORDER

The petitioner seeks for a Writ of Certiorarified Mandamus, to call for the records of the respondent herein in impugned distraint order No.36/16/A-3, dated 07.01.2016 and quash the same which is against second proviso to Section 58 of the TNVAT Act, 2006 and second proviso to Section 42(3) of the TNVAT Act, 2006 and direct the respondent not to proceed further in terms of the impugned proceedings.

2. By consent of both parties, the main Writ Petition itself is taken up for final disposal.

3. Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondent.

4. The petitioner has challenged the impugned distraint order under Section 8, as violative of statutory provisions of the Tamil Nadu Value Added Tax Act, 2006.

5. The order of the Appellate Deputy Commissioner (CT), Trichy dated 11.12.2015 was served on the petitioner on 04th January, 2016. The said order also provides an appeal before the Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai, within 60 days from the date of receipt of this

order, which period is still in force till March. While so, it is found that the respondent has issued the impugned distraint order demanding a sum of Rs.17,39,421/-, failing which an order of attachment of property of the petitioner would be effected, followed by an auction in the same. It is this distraint order, which is now challenged by the petitioner, who contends that the period of limitation for filing the appeal is still available. Secondly, in terms of proviso of Section 58 of TN VAT Act, 2006, the petitioner has paid the entire tax in connection with the appeals for the respective Assessment Years.

6. It is submitted by the learned counsel for the petitioner that any coercive steps, at this stage before filing the appeal for recovery of amount, would result in undue hardship to the petitioner. The learned counsel for the petitioner has also placed reliance of the Judgment of this Court in ***Lakshmi Machine Works Limited Vs. Deputy Commissioner (CT), Coimbatore and others*** reported in ***(2008) 17 VST 32 (Mad)*** and ***M/s.Flextronics Technologies India Private Limited Vs. The Assistant Commissioner (CT), Varadharajapuram*** in ***W.P(MD)No.15373 of 2014.***

7. The learned counsel appearing for the respondent though objected that the above said grounds are available before the Appellate Authority, however, conceded that no coercive steps would be taken till the expiry of the statutory period prescribed for preferring an appeal. In effect, the distraint order passed on 07.01.2016 will not be enforced till the statutory period of limitation for filing the appeal.

8. Recording the above undertaking given by this context, the Writ Petition is disposed of directing the respondent to file an appeal and adjudicate all the issues in the appeal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer,
Woraiyur Assessment Circle,
Trichy - 3.

+ 1 CC TO MR.J.MADHU SUTHANAN, ADVOCATE IN SR NO. 6661
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR NO. 6847

PS
TE/AAL-MPA/ : 16/02/2016 : 2P/4C

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