

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.675 of 2017

and W.M.P.No.724 of 2017

Tvl.Agro Refo(A)rmers
Rep. by its Proprietor Mr.J.Stalin
No.29, NSR road
Saibaba colony
Coimbatore-641 011. Petitioner

vs.

1.The Assistant Commissioner
Saibaba colony Assessment circle
Coimbatore-18.

2.The Branch Manager
Karur Vysya Bank
Saibaba colony branch
Coimbatore-641 011. Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus calling for the records on the files of the first respondent in TNVAT/33872164362/2014-15 dated 29.08.2016 quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the principle laid down by this Court and direct to the respondent to consider the petitioner representation dated 28.12.2016 before passing the assessment order.

For Petitioner : Mr.D.Vijayakumar
For Respondent : Mr.K.Venkatesh
Govt. Advocate

ORDER

1.Issue notice. Mr.K.Venkatesh, accepts notice on behalf of the respondents. With the consent of counsels for the parties, the writ petition is taken up for hearing and final disposal.

2.By virtue of instant writ petition, challenge is laid to the order dated 29.08.2016 passed by respondent No.1, whereby tax, in the sum of Rs.1,32,168/- has been imposed, after making requisite adjustment qua tax paid.

3.A perusal of the record shows that respondent No.1 has proceeded to pass the impugned order, as a verification of the abstract enclosed with the Form W W revealed that the petitioner had effected inter-state sale of goods for a value equivalent to Rs.50,66,542/- against C Forms. The respondent No.1, thus, concluded that though this fact was reported in Form W W, the requisite C Forms had not been filed. Accordingly, a decision was taken to reverse the corresponding ITC.

4. As against, the petitioner's stand is that he had not effected inter-state sale. The petitioner avers that he had only effected inter-state purchases for a value equivalent to Rs.50,66,542/-.

4.1 The petitioner seeks to demonstrate the same by drawing my attention to Form W W, which is appended at page 1 to 9 of the typed set of documents.

4.2 Learned counsel says that the entry made under clause 13 (b) would show that inter-state purchases are shown as Rs.50,66,542/- (page 4 of the typed set of documents).

4.3 Counsel for the petitioner says that the discrepancy crept in, albeit, inadvertently, in the annexure appended to Form W W. For this purpose, he has drawn my attention to page 9 of the typed set of documents.

4.4. It is the stand of the petitioner to bring about a course correction a rectification petition dated 28.12.2016, has already been filed, which has not been disposed of, as yet.

4.5. The petitioner is, thus, aggrieved by the fact that without disposal of the rectification petition, the impugned order was passed by the respondent, followed by a consequential order dated 22.12.2016, whereby, his bank account stands attached.

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5. Having regard to the assertions made in the writ petition, Mr. Venkatesh, learned counsel for the respondent, cannot, but submit that the first respondent ought to have disposed of the rectification petition in the first instance, before passing the impugned order. It is ordered, accordingly.

5.1. The first respondent will dispose of the rectification petition. For this purpose, the petitioner's authorised representative will appear before the first respondent on 19.01.2017 at 11.00 a.m.

5.2. In case, the first respondent finds that the assertions of the petitioner is sustainable, he will rectify the order dated 29.08.2016, and, accordingly, lift the attachment order dated 22.12.2016, forthwith.

6. The writ petition is, accordingly, disposed of. Resultantly, the connected pending application is also closed. There shall, however, be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner
Saibaba colony Assessment circle
Coimbatore-18.

2. The Branch Manager
Karur Vysya Bank
Saibaba colony branch
Coimbatore-641 011.

+1cc to Mr.D. Vijayakumar, Advocate, S.R.No.2327
+1cc to the Spl. Government Pleader (Taxes), S.R.No.2493

kji(CO)
md(11/01/2017)

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