IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3306 of 2017 & W.M.P.No.3273 of 2017

Mrs.Jannathu Gani,
Sole Proprietrix of M.M.Stores,
TIN No.33774700579,
No.93, First Floor, PJN Road,
Villupuram. ... Petitioner

Vs.

Assistant Commissioner, Commercial Taxes,
Villupuram Assessment Circle-II,
Collectorate, Villupuram District. ... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the Distraint Order in Form No.I, in Na.Ka.A3/2027/15, dated 11.11.2016, under Section 8(1) of Act II of 1865 issued by the respondent herein and quash the same.

For Petitioner : Mr.M.Meera Mohideen

For Respondent : Mr.K.Venkatesh, Government Advocate

O R D E R

Heard Mr.M.Meeral Mohideen, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent. With the consent on either side, the writ petition is taken up for final disposal.

2.The petitioner has filed this writ petition, challenging the Form I notice issued by the respondent demanding payment of arrears of sales tax for three assessment years 2011-12, 2012-13 and 2013-14, dated 11.11.2016. The petitioner's case is that he had no notice of proceedings, the orders of assessment were not communicated and therefore, the impugned recovery proceedings is bad in law.

3.The learned Government Advocate has obtained instructions from the respondent and produced copies of the original files, from which it is seen that though revision notices were issued to the petitioner for all the three assessment years, the petitioner has refused to receive the same. Likewise, when the assessment orders have been passed, the petitioner has refused to receive the same. As the petitioner has come forward with a false case, the Court would have been fully justified in imposing exemplary costs while disposing of this writ petition.

4.One more aspect as pointed out by the learned counsel for the respondent is that the petitioner has failed to disclose the true and correct facts to the counsel, who is appearing for him.

5.Thus, the stand taken by the petitioner is required to be deprecated. Considering the fact that the assessment orders were completed as early as in the year 2015, till date the respondent has not been able to recover the same towards tax or penalty.

6.Therefore, this Court is inclined to grant one more opportunity to the petitioner, more so when the assessment pertains to alleged mismatch between the petitioner's Annexure II and that of the details available in the intranet website of the Department.

7.Accordingly, this writ petition stands disposed of by directing the petitioner to pay 25% of the disputed tax for each assessment years. Such payment shall be made within a period of three weeks from the date of receipt of a copy of this order. If the petitioner complies with such condition, then the respondent is directed to furnish the copies of the three assessment orders. On receipt of the same, the petitioner is entitled to treat the assessment orders as show cause notices and submit their objections within a period of seven days thereafter. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law. The petitioner shall appear before the assessing officer and take copies of the assessment orders after complying with the said condition imposed by this Court. In the event, the petitioner fails to comply with the conditional order, then the benefit of the order passed by this Court will not enure to the petitioner and the writ petition automatically stands dismissed and the respondent shall be entitled to recover the entire tax and penalty, if any, by resorting to revenue recovery proceedings. No costs. Consequently, connected miscellaneous petition is closed.

13.09.2017

Index:Yes/No
abr

To

The Assistant Commissioner,
Commercial Taxes,
Villupuram Assessment Circle-II,
Collectorate, Villupuram District.

T.S.SIVAGNANAM, J.

abr

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