In the High Court of Judicature at Madras

Dated : 11.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24262 of 2017 &
WMP.Nos.25647 to 25649 of 2017

M/s.Elevumdudy Tea Company, rep.
by its Proprietor Mr.A.P.Paulrose ...Petitioner

Vs

1.The Commissioner, Department of
Commercial Taxes, Gudalur,
The Nilgiris District, Tamil Nadu

2.The Deputy Commissioner,
Department of Commercial Taxes,
Gudalur, The Nilgiris District Tamil Nadu

3.The Commercial Tax Officer,
Gudalur, The Nilgiris District Tamil Nadu

4.The Branch Manager, South Indian
Bank, Coonoor Branch, Coonoor,
The Nilgiris District Tamil Nadu ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent pertaining to his proceedings namely Form-U dated 28.3.2017 and his proceedings in reference No.CST 346435/2011- 2012 dated 29.5.2017, quash the same and consequently direct the respondents to consider the petitioner's request for filing revised return in light of the petitioner's representation dated 25.4.2017.

For Petitioner : Mr.K.S.Karthik Raja

For Respondents 1 to 3 : Mrs.Narmadha Sampath, SGP

ORDER

Mrs.Narmadha Sampath, learned Special Government Pleader accepts notice for respondents 1 to 3. Heard both. In view of the order this Court proposes to pass, notice to the fourth respondent is dispensed with and the writ petition itself is taken up for final disposal.

2. The petitioner is a manufacturer of tea and also a tea powder merchant in Kerala State. The petitioner's factory is situated at Devala, Gudalar, The Nilgiris. The petitioner is a registered dealer in the State of Tamil Nadu under the provisions of the Tamil Nadu Value Added Tax Act, 2006 apart from being registered in the State of Kerala under the provisions of the Kerala Value Added Tax Act. The petitioner is also holding a valid registration from the Tea Board as a manufacturer of tea.

3. In this writ petition, the petitioner is aggrieved by a notice for recovery of money purported to be the arrears of tax payable by the petitioner for the assessment year 2011-12.

4. According to the petitioner, they had no notice of earlier proceedings from their Assessing Officer, as, for the prior and subsequent assessment years, they have been assessed under the provisions of the Central Sales Tax Act, 1956 and since the consignments were duly covered by Form F declarations, the third respondent - the petitioner's Assessing Officer, considering the Form F declarations and having been satisfied with the transactions or consignment sales from the manufacturing unit at the Nilgiris District to their branch at Kerala, granted the benefit of Form F declarations. However, the petitioner was surprised to be informed by their bankers namely the fourth respondent that they have received a notice from the third respondent in Form U issued under Rule 9(4) of the Tamil Nadu Value Added Tax Rules, 2007 and that the petitioner's bank account has been attached.

5. In the typed set of papers, the petitioner has enclosed the assessments under the Central Sales Tax Act, 1956 for the years 2012-13 and 2013-14, from which, it is seen that the Form F declarations have been given due credit and the rate of tax has been declared as NIL. It is not known as to under what circumstances, the petitioner's bank account has been attached and as to how the tax has been computed for the assessment year 2011-12. With these facts, the petitioner is before this Court seeking to quash the Form U notice dated 28.3.2017 and to direct the respondents to consider the petitioner's representation dated 25.4.2017 for filing revised returns.

6. The learned Special Government Pleader appearing for respondents 1 to 3 would submit that the third respondent - the petitioner's Assessing Officer may be directed to consider the petitioner's representation, since it is represented that for only one year, they did not have notice of proceedings nor any assessment order has been passed.

7. Considering the facts and circumstances of the case, this Court is not inclined to quash the impugned Form U notice. However, this Court issues the following directions :

The impugned Form U notice shall continue to remain in effect. The attachment of the petitioner's bank account also shall continue. However, respondents 1 to 3 shall not withdraw any money from the petitioner's bank account for recovery of the alleged tax arrears for the assessment year 2011-12. The third respondent is directed to consider the petitioner's representation dated 25.4.2017, afford an opportunity of personal hearing and proceed further in accordance with law, within a period of three weeks from the date of receipt of a copy of this order. The attachment of the petitioner's bank account shall abide by the orders to be passed by the third respondent in terms of the above direction.

8. The writ petition is disposed of with the above directions. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

RS
To
1.The Commissioner, Department of Commercial Taxes, Gudalur,
The Nilgiris District.
2.The Deputy Commissioner, Department of Commercial Taxes,
Gudalur, The Nilgiris District.
3.The Commercial Tax Officer, Gudalur, The Nilgiris Ditrict.
4.The Branch Manager, South Indian Bank, Coonoor Branch, Coonoor,
The Nilgiris District.
+ 1 cc to Special Government Pleader Sr.65731
+ 1 cc to Mr.K.S. Karthik Raja, Advocate SR.65590

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NRJK(CO)
EU 6.10.2017