IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.1528 of 2017
And
W.M.P.Nos.1434 to 1436 of 2017

Tvl.Pooja Marketing
rep. by its Partner ... Petitioner

Vs.

1 The Assistant Commissioner (CT)
Hosur (South).

2 The South Indian Bank
Aenkal Branch, Parhar Complex
Opp. IOC Petrol Pump
Chandrapura Road,
Anekal- 652 106
Karnataka. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent's assessment order dated 31.10.2016 in CST No.1153266/ 2015-16 and quash the same and further direct the 1st respondent to accept the statutory forms offered by the petitioner vide representation dated 29.11.16.

For Petitioner : Ms.D.Naveena
for M/s.Adithya Reddy
For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

1.Issue Notice. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepts notice on behalf of the respondents. With the consent of learned counsel for parties, the writ petition is taken up for hearing and final disposal.

2.This writ petition is essentially directed against the assessment order dated 31.10.2016. By virtue of the impugned order, the petitioner has been called upon to pay tax after requisite adjustments, in the sum of Rs.99,82,218/-.

3.It appears that pursuant to the said order, recovery proceedings were commenced against the petitioner, whereby, a notice was issued to the petitioner's Bank, i.e., South Indian Bank to make over a sum of Rs.99,82,218/- to the respondents. These proceedings are encapsulated in a notice for recovery of money due dated 05.01.2017. The said notice has been appended at page no.36 of the typed set of the documents.

4.The principal ground of challenge that the learned counsel for the petitioner seeks to raise, is that, the assessment order was passed prior to expiry of the period of 15 days made available via notice dated 14.09.2016.

5.Learned counsel for the petitioner says that as per the said notice, the petitioner had a leeway of 15 days to file objections against the proposal to levy tax and that the said period of 15 days would commence from the date of receipt of the notice.

6.It is the petitioner's case that the notice was received by it only on 21.10.2016. Therefore, the submission made before me, is that, there has been a breach of principles of natural justice, as the assessment order which, as indicated above is passed on 31.10.2016, that is prior to the expiry of time given for filing objections.

7.It is the case of the petitioner before me, that, it has in its possession, the relevant declarations in Form 'C' and 'F' and, that, they could have been filed it, if due opportunity had been given in that behalf.

8.Learned counsel for the petitioner says that as a matter of fact, a representation dated 29.11.2016, on the same lines was filed with the respondent, on which, no order has been passed, as yet, by the respondent.

9.Mr.Annamalai, who appears for the respondents concedes that due opportunity was not given to the petitioner and therefore, perhaps, the order would have to be set aside.

10.Having heard, the learned counsels appearing for the parties and examined the record, including the original cover of the notice dated 14.09.2016, I am persuaded to hold that the assessment order dated 31.10.2016 was passed prior to the time granted to the petitioner, to prefer objections.

11.Accordingly, the impugned order is set aside. The necessary consequences of the same would be that the recovery proceedings will become inefficacious and therefore, no further steps can be taken in pursuance of the recovery notice dated 05.01.2017.

12.Furthermore, having regard to the fact that the representation dated 29.11.2016 has been filed, the first respondent is directed to pass a fresh order, after giving due opportunity to the petitioner, to present before him, in original, the declarations in Form 'C' and 'F'.

12.1.For this purpose, the petitioner's authorised representative will appear before the first respondent on 14.02.2017 at 11.00 a.m. In case, the said date is not convenient, a fresh date, will be given by the first respondent proximate to the date fixed above. Needless to say, the first respondent, after giving due opportunity to the petitioner, will pass a fresh order.

13.The writ petition is disposed of in terms of the aforesaid directions. Consequently, the connected pending applications are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Hosur (South).

+1cc to the Special Government Pleader Sr.4026
+1cc to Mr.Adithya Reddy, Advocate Sr.838

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kj[co]
srg 24/01/2017