IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No. 16345 of 2017
and
W.M.P.No.17671 of 2017

M/s.Maadhu Traders,
Rep.by its Proprietrix
No.4/177 Naachanapatti H,
Thottambatty Post,
Harur - 636 903,
Dharmapuri. ... Petitioner

Vs.

1. The Assistant Commissioner (CT),
   Enforcement (North),
   Greams Road,
   Chennai - 600 006.

2. The Joint Commissioner (CT),
   Enforcement-I,
   Chennai.

3. The Commercial Tax Officer,
   Harur Assessment Circle,
   Dharmapuri. ...Respondents

Prayer:-

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the third respondent in his proceedings in TIN:33913341338/2011-2012 and quash the notice dated 20.12.2016.

For Petitioner : Mr.R.L.Raman, Senior Counsel for Mr.B.Raveendran

For Respondents : Mr.S.Kanmani Annamalai, Additional Government Pleader (Tax)

O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax), takes notice for the respondents. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage.

2. The petitioner is aggrieved against the notice dated 20.12.2016 issued by the third respondent, wherein and whereby, the petitioner was called upon to file their objections within 15 days of receipt of the said notice and also by stating that the petitioner would appear for personal hearing on 29.12.2016.

3. The learned Senior Counsel appearing for the petitioner submitted that the very impugned notice issued, based on the report of inspection conducted by the officials, cannot be sustained, since such inspection itself was without jurisdiction. Therefore, he submitted that there is no point in saying that the petitioner should give their explanation to the impugned notice of proposal. He further invited this Court's attention to the order passed by this Court in W.P.No.17732 of 2014, dated 26.07.2016, wherein, the petitioner has challenged the said inspection report and submitted that this Court therein has given liberty to the petitioner to canvass the issue of jurisdiction as and when a notice is issued by the Assessing Officer. In nutshell, the contentions of the learned Senior Counsel is to the effect that the assessment, cannot be allowed to continue, pursuant to the issuance of the impugned notice, since the very basis of issuance of such notice viz., the inspection report submitted by the officials was without jurisdiction.

4. Per contra, the learned Additional Government Pleader (Tax) submitted that the petitioner cannot come before this Court and challenge the notice of proposal, which is admittedly issued by the competent jurisdictional Assessing Officer. He further submitted that in the earlier round of litigation, the petitioner fails to succeed in challenging the inspection report and therefore, they cannot now raise the very same issue in this writ petition. He further submitted that the liberty given by this Court in the earlier writ petition cannot be construed to mean that this Court has accepted the question of jurisdiction raised by the petitioner. Finally, the learned Additional Government Pleader urged this Court, not to entertain this writ petition even on the ground of laches, as the petitioner has chosen to file this writ petition challenging the impugned notice dated 20.12.2016, after a period of nearly seven months.

5. Heard both sides.

6. The challenge made in this writ petition is against the notice of proposal issued by the third respondent dated 20.12.2016. It is not in dispute that the third respondent is the competent jurisdictional officer to issue the impugned notice. But, the objection raised by the petitioner is not with regard to the jurisdiction of the third respondent in issuing the impugned notice, but against the inspection report referred to in the said notice, which according to the petitioner, was made by some officials having no jurisdiction. In support of such contention, the learned Senior Counsel appearing for the petitioner heavily relied on the observations made at paragraph No. 8 of the order made in W.P.No.17732 of 2014, dated 26.07.2016, which reads as follows :

> "After hearing the learned counsels for the parties and on perusing the materials placed on record, at the very out set, it has to be pointed out that writ of certiorari cannot be issued, quashing the inspection report or the seizure mahazar or the statement recorded from the dealer. The petitioner would state that the officer does not posses the jurisdiction to record the statement or prepare the inspection report or seize the documents. But, however, it appears that the documents were seized from the place of business of the petitioner. Therefore, if the petitioner has any reservations on the statement given by them before the Enforcement Officials, it is always open to the petitioner to raise contention before the assessing officer and it is a settled legal position that the assessing officer, while completing the assessment, cannot solely be guided by the statement recorded by the Enforcement Officials. Therefore, the petitioner need not have any apprehension that their rights and remedies will stand foreclosed, if they allow the impugned inspection report and the statement to stand. It is always well open to the petitioner to contest the merits of the matter, when the assessing officer takes up the issue. Even if in a case the petitioner states that the record does not belong to their company or organisation that point also could be canvassed before the assessing officer. Since the petitioner has raised the question of jurisdiction and the respondents have stated that there is delegation of power, this Court is not inclined to quash the inspection report or the statement, at this juncture. This issue relating to jurisdiction is left open to be canvassed by the petitioner as and when notice is issued by the assessing officer."

7. A careful perusal of the above observation made by this Court on the earlier round of litigation between the same parties, would show that this Court has not set aside the inspection report, even though the petitioner has raised the question of jurisdiction therein. On the other hand, this Court has specifically observed in the said order that the petitioner need not have any apprehension that their rights and remedies will stand foreclosed, if they allow the impugned inspection report and the statement to stand and that it is always open to the petitioner to contest the merits of the matter, when the Assessing Officer takes up the issue.

8. When such being the observation made by this Court, while rejecting the jurisdictional issue raised by the petitioner as against the inspection report, I do not think that the petitioner can be justified in contending that the assessment proceedings cannot go on, based on such report which formed the basis for the impugned notice, especially, when the Officer who issued the impugned notice is admittedly having absolute jurisdiction. When the notice of proposal is issued, needless to say that it is always open to the petitioner to raise all their objections including the one against the contents of the inspection report. Further, it is well settled that the Assessing Officer being the quasi judicial authority, has to independently apply his mind and pass the order of assessment, after considering the objections of the assessee and by giving an opportunity of personal hearing to them.

9. Therefore, when the present notice is issued by the competent authority and the petitioner is having every right and liberty to file their objections to the said notice by raising all the points, I do not think, that the petitioner can now come before this Court and filed this writ petition, that too, after a period of seven months to challenge the impugned notice.

10. No doubt, the learned Senior Counsel appearing for the petitioner strongly relied on the liberty given in the order made in W.P.No.17732 of 2014 dated 26.07.2016, at paragraph No.8.

11. It is true that the petitioner was given a liberty to canvas the issue of jurisdiction. But, at the same time, when this Court finds that the very notice is issued by the competent jurisdictional Assessing Officer and that the observations made in the very same paragraph by the learned Judge indicate in clear and categorical terms that the petitioner can raise all the points before the Assessing Officer and contest the merits of the matter, I do not think that the petitioner is justified in their attempt to stall the assessment proceedings once again

by filing the present writ petition. As rightly pointed out by the learned Additional Government Pleader, it is to be stated that liberty granted to the petitioner to raise the question of jurisdiction, does not mean that he is entitled to succeed on such issue, more particularly, when this Court on the earlier occasion refused to accept the very same question of jurisdiction. Moreover, as pointed out supra, the Assessing Officer will have to look into the issue involved and pass the assessment order on his own independent reasonings and findings and certainly the inspection report alone cannot be the deciding factor, as the petitioner is always at liberty to challenge the correctness or otherwise of the contents of such report, while filing their objections. Accordingly, I find no merit to entertain this writ petition, which is filed against the notice of proposal.

12. Accordingly, this writ petition is dismissed, however, by granting liberty to the petitioner to file their objections within a period of four weeks from the date of receipt of a copy of this order. If such objections are filed, it is open to the Assessing Officer to pass an order of assessment, after considering the objections and also by giving an opportunity of personal hearing to the petitioner and pass final order of assessment on merits and in accordance with law. This Court also makes it very clear that it has not gone into the merits of the matter, as it is for the Assessing Officer to consider and decide the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mk/ms

To

1. The Assistant Commissioner (CT),
Enforcement (North),
Greams Road,
Chennai - 600 006.

2. The Joint Commissioner (CT),
Enforcement-I,
Chennai.

3. The Commercial Tax Officer,
Harur Assessment Circle,
Dharmapuri.

+1cc to the Special Government Pleader Sr.46160
+1cc to Mr.B.Raveendran, Advocate Sr.45159

W.P.No.16345 of 2017

svi[co]
srg 06/07/2017