IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2017

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THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.19064 to 19066 of 2017 &
W.M.P.Nos.20583 to 20585 of 2017
and
W.P.Nos.17362 & 17363 of 2017
W.M.P.Nos. 18860 & 18861 of 2017

S.Ravindranathan ... Petitioner in W.P.No.19064 of 2017
S.Ashok ... Petitioner in W.P.No.19065 of 2017
S.Gauthama Sankar ... Petitioner in W.P.No.19066 of 2017
Mrs.Madhavi Lata ... Petitioner in W.P.No.17362 of 2017
S.Ravindranathan ... Petitioner in W.P.No.17363 of 2017

Vs.

1.The Assistant Commissioner (CT),
T.Nagar Assessment Circle,
Greenways Road, Chennai 600 028.

2.The Commissioner,
Commercial Tax,
Ezhilagam, Chepauk,
Chennai 600 005. ... Respondents in all W.Ps

Prayer: Writ Petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, to call for records in TIN No.33831582966/2015-2016 and TIN No.33261582067/2016-2017 respectively, on the file of the first respondent dated 31.05.2017 and quash the same as illegal and without authority of law.

For Petitioners in all the Writ Petitions : Dr.A.Thiyagarajan, Senior Counsel for M/s.S.Ramesh kumar

For both Respondents in all the Writ Petitions : Mr.K.Venkatesh, Government Advocate

COMMON ORDER

Heard Dr.A.Thiyagarajan, learned Senior Counsel appearing for the petitioners and Mr.K.Venkatesh, learned Government Advocate, appearing for the respondents.

2. The petitioners have challenged the notice issued by the first respondent dated 31.05.2017, which is titled as "URGENT NOTICE". According to the petitioners, they are the Directors of M/s.MPL Two Wheelers Private Limited and M/s.MPL Cars Private Limited respectively, the companies, registered as dealers on the file of the first respondent and that the petitioners did not take any active participation in the day-to-day affairs of the companies and later on, came to know that there are arrears of sales tax payable by the companies for the assessment years 2015-16 and 2016-17 and in this regard, notices have been issued to the companies on 13.03.2017 and 08.03.2016 respectively, by the first respondent.

3. The petitioners would state that the companies were greatly affected due to floods and they were under severe financial crisis. While so, the first respondent has issued the impugned notice to the petitioners calling upon them to file their objections, failing which, has threatened coercive action. The petitioners' case is that the first respondent cannot proceed against the personal properties of the Directors for arrears payable by the companies.

4. Though elaborate counter affidavit has been filed by the first respondent setting out all the factual averments, which clearly shows the companies are chronic defaulter, in my considered view, there is no necessity for this Court to adjudicate the issue as to whether the petitioners can be proceeded against for the default of the companies, since the impugned proceedings is only a notice, the appropriate procedure to be adopted by the petitioners is to file their objections to the notice, raising all factual and legal grounds and without doing so, they cannot approach this Court directly by way of writ petition to quash the notice.

5. Admittedly, the first respondent has jurisdiction to issue notice. Thus, when the impugned notice does not suffer from any jurisdictional error, all other issues have to be adjudicated by the noticee before the first respondent. Therefore, the writ petitions are liable to be dismissed on the ground that they are not maintainable.

6. The learned Senior Counsel for the petitioners submitted that the companies are earnestly prosecuting the matter to clear the entire arrears of the companies and have given

representation to the second respondent viz., the Commissioner of Commercial Tax, on 06.04.2017 and it appears that explanation is under active consideration and orders are likely to be passed within fifteen days.

7. In the light of the above, the writ petitions are dismissed as not maintainable. The first respondent is directed to keep the impugned notice in abeyance for a period of three weeks from the date of receipt of a copy of this order and by then, if any order has been passed by the second respondent on the representation of the companies viz., M/s.MPL Two Wheelers Private Limited and M/s.MPL Cars Private Limited, it is open to the petitioners to submit their objections to the impugned notice. If no orders are passed by the Commissioner, within a period of three weeks, then the petitioners should submit their objections to the impugned notice, within seven days thereafter, failing which, the first respondent is entitled to proceed further, pursuant to the impugned notice in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
1.The Assistant Commissioner (CT),
T.Nagar Assessment Circle,
Greenways Road, Chennai 600 028.
2.The Commissioner,
Commercial Tax,
Ezhilagam, Chepauk,
Chennai 600 005.
+1 cc to M/s.S.Ramesh kumar Advocate sr 58095
+1 cc to the Special Pleader taxes sr 58144

W.P.Nos.19064 to 19066,
17362 & 17363 of 2017

gmI(co)
aa06/09/2017