IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.11000 of 2006
and W.P.M.P.No.12504 of 2006

M.Khaleelullah .. Petitioner

..Vs..

1.The Deputy Commercial Tax Officer,
Gudiyatham West, Gudiyatham,
Vellore District.

2.The Commercial Tax Officer,
Periamet Circle,
Chennai. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent herein in Na.Ka.No.A.3.3625/04 dated 06.01.2006, quash the same and consequently direct the respondents to furnish the details requested by the petitioner by his letter dated 25.05.2005.

For Petitioner : Mr.K.Govi Ganesan

For Respondents: Mr.K.Venkatesh
Government Advocate (Taxes)

O R D E R

Heard Mr.K.Govi Ganesan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate (Taxes) appearing for the respondents.

2.The petitioner has filed this writ petition challenging the notice dated 06.01.2006 issued in Form No.V being a notice of attachment of the immovable properties mentioned therein. The respondents have initiated action for recovery of the sales tax dues payable by M/s.Abdul Kalam Sahib and Company, who was registered as a dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) on the file of the second respondent. The petitioner's case is that there were three partners, namely, A.Mohamed Ibrahim Saheb, Abdul Sayed

Saheb and Abdul Saleem Saheb. The first and the third partner died on 20.12.2005 and 23.11.2001 respectively. It is stated that the whereabouts of the second partner is not known. The petitioner is one of the legal heir of the deceased partner, Late A.Mohamed Ibrahim Saheb. The petitioner is aggrieved by the impugned notice on the ground that without furnishing any details to the petitioner, the auction notice has been issued in the name of the dead persons. Therefore, the petitioner seeks for setting aside the auction notice pursuant to the notice of attachment.

3.At the time when the writ petition was entertained, an order of interim stay was granted on 20.04.2006 subject to the condition that the petitioner pays a sum of Rs.5,00,000/- and a direction was issued to the second respondent to furnish all details/copies of proceedings sought for by the petitioner in his representation dated 25.05.2005. There is nothing on record to show as to whether the copies of the documents sought for by the petitioner have been furnished.

4.Thus, this Court while entertaining the writ petition was convinced that the petitioner should be furnished with the copies of the relevant records and proceedings, so that the petitioner would be in a position to defend his rights. Therefore, this Court is of the view that at this juncture, the impugned proceedings cannot be proceeded with as there has been an order of interim stay since 2006 and there was also a direction to furnish necessary documents. Thus, for the above reason the following order will meet the ends of justice and also protects the interest of revenue.

5.The writ petition is allowed, the impugned notice is set aside and the petitioner is given liberty to submit his objections if all the documents as sought for by the petitioner which have been furnished by the second respondent. The objections shall be filed by the petitioner within a period of thirty days from the date of receipt of a copy of this order. On receipt of the objections, the second respondent shall afford an opportunity of personal hearing to the petitioner and proceed to decide the matter in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

cse

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commercial Tax Officer,
Gudiyatham West, Gudiyatham,
Vellore District.

2.The Commercial Tax Officer,
Periamet Circle,
Chennai.

+1cc to Special Government Pleader SR.No.83322

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sm:11.12.2017