IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19245 of 2007

M/s.Prompt Canon Services
Rep. by its Proprietor, P.Rosu Reddy,
534, Anna Salai, Chennai-600 018. ... Petitioner

Vs.

1.The State of Tamil Nadu, Rep. by its
Secretary to Government, Department of
Commercial Taxes & Religious Endowments,
Fort St. George, Chennai-600 009.

2.The Deputy Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring that Sl.No.9 of the Eleventh Schedule to the Tamil Nadu General Sales Tax Act, 1959 as introduced by the Tamil Nadu Act 22 of 2002 with effect from 01.07.2002 is ultra vires Articles 14, 265, 286, 301, 304 (a) of the Constitution of India.

For Petitioner : Mrs.R.Hemalatha
For Respondents : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.



2.The petitioner has filed this writ petition for issuance of Writ of Declaration, to declare Sl.No.9 of the 11$^{th}$ Schedule to the Tamil Nadu General Sales Tax Act, 1959 as introduced by the Tamil Nadu Act 22 of 2002 with effect from 01.07.2002 as ultra vires Articles 14, 265, 286, 301, 304 (a) of the Constitution of India. The issue travelled up to the Hon'ble Supreme Court in the case of Sony India Pvt., Ltd. v. CTO reported in (2009) 23 VST 1 (SC).

3.The Hon'ble Supreme Court while considering the correctness of the decision of this Court dismissing similar writ petitions, held that the contentions raised by the assesse requires adjudication and the assesse ought to have filed appeals for each assessment years before the appellate authority, which they had not done. It was further held that since important question of law arose for determination, the assesse has to prefer statutory appeal within a stipulated time and direction was issued to the appellate authority to decide the appeals within a period of six months. In the light of the decision of the Hon'ble Supreme Court, the petitioner has to necessarily go before the assessing officer.

4.In the affidavit filed in support of this writ petition, the petitioner has not stated as to whether they have received show cause notice from the respondent-Assessing Officer. Since as per the decision of the Hon'ble Supreme Court, the matter has to go back to the Assessing Officer, in the event, already show casue notice had been issued to the petitioner, they are directed to submit their objections within a period of 30 days from the date of receipt of a copy of this order. On receipt of the objections, the second respondent is directed to afford an opportunity of personal hearing to the petitioner to consider the legal and factual grounds raised by the petitioner and complete the assessment by passing a reasoned order. In the event, show cause notice has not been issued by the second respondent-Assessing Officer, the second respondent is directed to issue show cause notice as expeditiously as possible, the petitioner shall submit their objections within a period of thirty days from the date on which show cause notice is received and the show cause notice shall be adjudicated after affording an opportunity of personal hearing to the petitioner.

Accordingly, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)



//True Copy//

Sub Assistant Registrar

abr

To

1.The Secretary to Government,
The Government of Tamil Nadu,
Department of Commercial Taxes &
Religious Endowments,
Fort St. George, Chennai-600 009.

2.The Deputy Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
Chennai.

+1 cc to M/s.R.Hemalatha Advocate sr 69067

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