IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.07.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.12564 of 2004

S.Ramalingam
Proprietor,
M/s.Prakash Chemicals ...Petitioner

Vs.

1. The Commercial Tax Officer,
Mannady (West) Assessment Circle,
Chennai.

2. The Deputy Commercial Tax Officer,
Chidamabaram I Assessment Circle,
Chidambaram.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records, relating to the proceedings of the first respondent, in Rc.No.1044/98 A3, dated 14.01.2004, and to quash the same, and consequently, to direct the first respondent to furnish the certified copy of the assessment order for the assessment year, 1995-1996 to the petitioner.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : M/s.K.Venkatesh
Government Advocate

O R D E R

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

2. The petitioner is aggrieved by the distraint proceedings initiated by the respondent/Department for recovery of the sales tax, payable by the petitioner for the assessment year 1995-96, under the provisions of the Tamil Nadu General

Sales Tax Act,1959.

3. According to the petitioner, he had stopped his business acitivities during September 2000, and migrated to his native place and became agriculturist in the year, 2002. The distraint proceedings were initiated against the petitioner, alleging that, there are tax due for the assessment year 1995-1996. The petitioner stated that, he was not served with any notice or order of assessment, and therefore, he requested copies of the assessment order by submitting a representation, but, the said representation was not considered. Therefore, the petitioner moved Tamil Nadu Taxation Special Tribunal, by filing Original Petition, in O.P.No.1075 of 2002. The Special Tribunal, by order, dated 23.12.2002, disposed of the Original Petition and directed the respondent to furnish certified copy of the assessment orders for the years 1994-95 and 1995-96. In terms of the direction issued by the Special Tribunal, the certified copy of the assessment orders for the years 1994-95 was served on the petitioner, and he has challenged the same before the Appellate Authority, who allowed the Appeal and remanded the matter to the Assessing Officer, and the matter has attained finality. However, the petitioner was not furnished with certified copy of the assessment order for the year 1995-96, in spite of the direction issued by the Special Tribunal. Parallely, the respondent/Department initiated recovery proceedings against the petitioner, by issuing the impugned distraint notice. In the parawise instructions given by the respondent/Department to the learned Special Government Pleader, it is admitted that for the year 1995-96, certified copy of the assessment order could not be issued, as the files were missing. If such be the case, then, obviously, the respondent cannot initiated distraint proceedings against the petitioner, by issuing the impugned notice.

4. Hence, for the above reason, the Writ Petition is allowed and the impugned proceedings are set aside with liberty to the respondent/Department to serve certified copy of the assessment order for the year 1995-96 as soon as the files are traced, and thereafter, proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sd

To

1. The Commercial Tax Officer,
   Mannady (West) Assessment Circle,
   Chennai.

2. The Deputy Commercial Tax Officer,
   Chidamabaram I Assessment Circle,
   Chidambaram.

+1cc to Special Government Pleader SR.No.48681
+1cc to Mr.K.Govi Ganesan, Advocate SR.No.48852

Writ Petition No.12564 of 2004

GN(31/07/2017)