BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).Nos.4242 of 2017
and
W.M.P.(MD)No.3383 of 2017

M/s.Malaravan Marketing
Represented by its Proprietor,
No.7/2D. New Dharapuram Road,
Palani. ..Petitioner

Vs.

1.The Appellate Deputy Commissioner CT,
Madurai North,
O/o. ADC CT-Madurai North,
Dr.Thangaraj Salai,
Madurai.

2.The Commercial Tax Officer,
Palani I Assessment Circle,
O/o AC CT-Palani,
Palani. ..Respondents

Prayer in W.P(MD).No.4243 of 2017: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarifide Mandamus to call for the records of the second respondent herein in impugned notice TIN No.33125282403/12-13, 13-14 dated 15.02.2017 quash the same and direct the second respondent not to proceed further in terms of the impugned proceeding till the disposal of the appeal pending before the first respondent or alternatively direct the first respondent to conduct the final hearing in AP.No.271/15.

For Petitioner : Mr.K.Vaitheeswarn
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

The petitioner challenges the demand notice dated, 15.02.2017 directing the petitioner to pay a sum of Rs.1,75,542/-.

2. The learned counsel appearing for the petitioner

submits that he has filed an appeal before the appellate authority and he has also paid 25% of the tax demanded. However, the appeal is pending. Even the Interlocutory application filed by him for stay of the order of assessment is pending before the Appellate Authority. In the said circumstances, the learned counsel for the petitioner submits that in terms of proviso section 42(2) of Tamil Nadu Value Added Tax Act, the petitioner is entitled to get a direction from this Court restraining the second respondent from proceeding with recovery in terms of the impugned order.

3. I have carefully considered the submission of the learned counsel for the petitioner in the light of section 42(2) of the Tamil Nadu Value Added Tax Act, 2006. As per the proviso to Section 42(2), the recovery shall not be taken or continued only if the assesee has complied with an order by any of the authorities to whom the dealer has appealed or applied for revision under Sections 51,52,54,57,59 or 60. In the present case, Interlocutory application filed by the petitioner for stay is also pending and no order has been passed.

4. Hence this Court is inclined to dispose of this writ petition with the following direction:

> *"It is open to the petitioner to approach the Appellate Authority and pursue the application for stay, which is pending before the Appellate Authority. The Appellate Authority shall dispose of the Interlocutory Application for stay on merits, within a period of three weeks from the date of receipt of a copy of this order and till such time the Interlocutory application is decided by the Appellate Authority, the recovery shall be kept in abeyance."*

No costs. Consequently, connected Miscellaneous Petition is closed

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Appellate Deputy Commissioner CT,
Madurai North,
O/o. ADC CT-Madurai North,
Dr.Thangaraj Salai,
Madurai.

2.The Commercial Tax Officer,
Palani I Assessment Circle,
O/o AC CT-Palani,
Palani.

+1cc to special government pleader SR. No.14695
1cc to J.MADHUSUTHANAN IN SR.No.14987
TRP
JS/RR/22/03.2017/3P-5C

W.P.(MD).Nos.4242 of 2017
and
W.M.P.(MD)No.3383 of 2017

14.03.2017