IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.4.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.10135 OF 2018 &
WMP.NOS.12084 & 12085 OF 2018

M/s.Velmurugan Traders (defunct),
rep.by its Proprietor K.Kulandaivel ...Petitioner

Vs

The Assistant Commissioner (CT),
Chithode Circle, Erode,
Erode District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in CST NUMBER/1155567/ 2015-16 dated 14.7.2016 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mrs.R.Hemalatha
For Respondent : Mr.M.Hariharan, AGP

ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has challenged the order of assessment under the provisions of the Central Sales Tax Act, 1956 for the year 2015-16.

3. The respondent issued a notice to the petitioner stating that on cross verification of transactions with inter-state movement at Attible Check Post and with reference to transit pass of the check post, it was found that the petitioner effected inter-state sales of pepper. In the said notice, details were furnished such as the dates, on which, the inter-state sales were effected, vehicle numbers, name of the goods and the corresponding values. In other words, when the goods crossed the check post, the vehicle numbers, value of the goods, name of the goods were recorded. Therefore, it is alleged that

though the petitioner effected inter-state sales of black pepper for a value of Rs.1,59,27,912/-, they did not file the returns in Form I under the provisions of the Central Enactment and the tax due thereon has not been paid.

4. In response to the said notice, the petitioner sent a reply dated 27.4.2015 stating that they stopped business from 01.4.2015 onwards and that they also surrendered the original tax payer identification number and the CST certificate. The petitioner further stated that they made a security deposit in the form of fixed deposit under the Tamil Nadu Value Added Tax Act, 2006 and requested that the fixed deposit may be refunded at the earliest.

5. The respondent, by the impugned order, rightly rejected the contention of the petitioner on the ground that the burden of proof lies on the petitioner to prove that there were no such transactions. This is more so because, even according to the petitioner, the cancellation was effected by proceedings dated 20.8.2015 though it was with effect from 01.4.2015. Therefore, the petitioner should produce the records to show that there were no other transactions after 01.4.2015. Further, records like bank statements and other details maintained with the petitioner would be sufficient proof to show that there were no business activities from 01.4.2015.

6. In the considered view of this Court, one more opportunity can be granted to the dealer by the respondent to establish that there were no such transactions on and after 01.4.2015, especially when the respondent accepted the letter dated 27.4.2015 wherein the petitioner categorically stated that they stopped business from 01.4.2015.

7. In the light of the above, the writ petition is disposed of by directing the petitioner to treat the impugned proceedings as a show cause notice and file documents to establish that on and after 01.4.2015, they stopped business activities. If the petitioner files documents within 15 days from the date of receipt of a copy of this order, the respondent shall consider the same, afford an opportunity of personal hearing and redo the assessment in accordance with law. However, if the petitioner is unable to produce any such documents, the benefit of this order will not enure to the petitioner and it will be open to the petitioner to avail statutory remedies. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(Audit)

//True copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Chithode Circle, Erode,
Erode District.

+1cc to Mr.R.Hemalatha, Advocate SR.No.30892
+1cc to Special Government Pleader (Taxes) SR.No.30954

WP.No.10135 of 2018 & WMP.
Nos.12084 & 12085 of 2018

CA(CO)
GN(11/05/2018)