IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.7230 of 2018

Mrs.Bhaggyam Construction
Rep. by its Proprietor
No.2, Saranghabani Street
T.Nagar, Chennai- 600 017 .. Petitioner

-vs-

The Assistant Commissioner (ST)
Pondy Bazaar Assessment Circle
Chennai ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in TIN 33531522021/2013-14 (S17491516AB11) and quash the proceedings dated 09.03.2018 issued therein.

For petitioner : Mr.R.L.Ramani
Senior Counsel
for Mr.B.Raveendran

For Respondent : M/s.G.Dhanamadhri
Government Advocate

O R D E R

Heard Mr.R.L.Ramani, learned senior counsel, assisted by Mr.B.Raveendran, learned counsel on record for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondent.

2.The petitioner has filed this writ petition challenging a notice dated 09.03.2018 by which the respondent has stated that the petitioner has not fulfilled the conditions specified under Section 6(1) of the Tamil Nadu Value Added Tax Act, 2006 ('Act' for brevity) and the payment of tax at compounded rates under Section 6 of the Act is not in order and hence, the respondent proposed levy of tax under Section 5 of the Act, quantified the proposed demand and has invited the objections from the petitioner along with supporting documents.

3. The challenge to the impugned proceedings is on the ground that in the assessee’s own case similar notice was issued by the respondent for the Assessment year 2008-09, the petitioner contested the notice, yet the Assessing Officer confirmed the proposal and levied tax under Section 5 of the Act. Aggrieved over the same, the petitioner preferred appeal before the Appellate Deputy Commissioner (CT), Chennai in A.P.No.176 of 2015 (VAT) and the said appeal was allowed by order dated 18.05.2015. It is stated that though the Revenue has preferred further appeal before the Tamil Nadu Sales Tax Appellate Tribunal against the order of the Appellate Authority, there is no interim order staying the proceedings of the Appellate Deputy Commissioner. The petitioner has had the benefit of similar orders for two other Assessment years, namely 2007-08 and 2009-10. All the three appeals have been allowed by the Appellate Authority by orders dated 18.05.2015. Therefore, it is submitted that the impugned notice issued by the respondent is without jurisdiction.

4. The learned Government Advocate pointed out that the Appellate Authority in the appeals filed by the petitioner has solely relied upon the decision in the case of Sintech Vs. The Commercial Tax Officer, Korattur Assessment Circle reported in [2008] 15 VST 398 (Mad), which case arises under the provisions of the Tamil Nadu General Sales Tax Act and not under the provisions of the Tamil Nadu Value Added Tax Act and Section 7C of the Tamil Nadu General Sales Tax Act is not in parametria with Section 6 of the Tamil Nadu Value Added Tax Act. Therefore, the said decision could not have been applied to the petitioner’s case. It is further submitted that the Hon’ble Division Bench in the case of the Commercial Tax officer Vs. M/s.Sintech in W.A.No.1536 of 2010 dated 04.07.2017 tested the correctness of the order and while doing so, took note of the decision of the Hon’ble Supreme Court in the case of M/s.Kone Elevators (India) Ltd., Vs. State of Tamil Nadu reported in 2014 (7) SCC 1, which is popularly known as second Kone case and dismissed the appeal filed by the State. It is submitted that in the said decision of the Hon’ble Division Bench, the issue as to whether the decision of the Sintech case could be made applicable to the case arising under the Tamil Nadu Value Added Tax Act was not specifically dealt with.

5. It is pointed out by the learned senior counsel for the petitioner that no such submissions, as presently made by the learned Government Advocate, were advanced before the Division Bench. Be that as it may, the decision in the case of Sintech has been approved by the Division Bench vide order dated 04.07.2017. It is not clear as to whether the State has preferred Special Leave Petition before the Hon'ble Supreme Court against the said decision. In the Assessee's own case for the earlier Assessment years identical issue was considered and they have succeeded before the Appellate Authority. These orders are now put to challenge before the Tamil Nadu Sales Tax Appellate Tribunal and no final order has been passed till date. At this juncture, if the petitioner is called upon to respond to the impugned notice, that would amount to putting the dealer to prejudice. However, taking note of the fact that the appeals filed by the Revenue is pending before the Tamil Nadu Sales Tax Appellate Tribunal, this Court is of the view that ends of justice would be met if the impugned notice is directed to be kept in abeyance till the disposal of the appeal by the Sales Tax Appellate Tribunal.

In the result, the writ petition is disposed of by directing the respondent to keep the impugned notice under abeyance and await the decision in the appeal filed by the petitioner against the order passed by the appellate Deputy Commissioner in A.P.No.174 to 176 of 2015 VAT dated 18.05.2018. It is made clear that in the event if the Revenue succeeds before the Tribunal it is open to them to revive the impugned notice. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST)
Pondy Bazaar Assessment Circle
Chennai

+1cc to Mr.B.Raveendran, Advocate sr.no.53348
+1cc to Government Pleader(T) sr.52984

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nr 29/08/2018