In the High Court of Judicature at Madras

Dated : 11.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.11305 of 2018 &
WMP.Nos.13203 & 13204 of 2018

M/s.Sreeman Narayana Traders
(Defunct), rep.by its Proprietor
B.Sasi Kumar ...Petitioner

Vs

The Assistant Commissioner (CT)
(FAC), Pollachi (Rural) Assessment
Circle, Pollachi, Coimbatore 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 No.667165/2009-2010 dated 03.9.2014 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar

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 filed this writ petition challenging the assessment order under the provisions of the Central Sales Tax Act, 1956 for the year 2009-10.

3. The challenge to the assessment order is not on merits of the assessment, but on the ground of violation of the principles of natural justice. The petitioner has filed this writ petition challenging the impugned order after obtaining a certified copy of the same on the ground that the impugned order was not served on the petitioner.

4. To ascertain the correct factual position, the learned Government Advocate was directed to take notice and get instructions from the Assessing Officer. Accordingly, the learned Additional Government Pleader has produced written instructions given by the respondent. From the written instructions, it is seen that the revision notice dated 31.1.2014 was not served on the dealer, as the registered cover was returned with the endorsement 'not known'. That apart, the learned Additional Government Pleader submits that the assessment order has not been served on the petitioner and that is why, they have been served with a certified copy.

5. However, from the written instructions , this Court finds that notice initiating proceedings under the Revenue Recovery Act for recovery of the arrears of tax was received by the proprietor on 07.1.2015.

6. Considering the peculiar facts of the case and also taking note of the admission that the assessment order has not been served on the dealer, this Court is of the view that one more opportunity can be granted to the petitioner to go before the Assessing Officer and submit their objections.

7. In the light of the above, the writ petition is disposed of with a direction to the petitioner to treat the impugned proceedings as a show cause notice and file their objections within a period of 15 days from the date of receipt of a copy of this order. No costs. Consequently, the connected WMPs are closed.

8. It is submitted by the learned counsel for the petitioner that the property owned by the petitioner's father has been attached.

9. The learned Government Advocate submits that the property was initially owned by the proprietor of the petitioner Mr.B.Sasi Kumar and in the year 2008, the property has been transferred by way of family settlement in favour of the proprietor.

10. In any event, the property has also been attached and not sold. Therefore, till the de novo proceedings are completed, the attachment shall continue. But, the property shall not be sold. Subject to the orders to be passed, the respondent shall also pass orders in regard to the property in question and till the above direction is complied with, the respondent shall not initiate any coercive action against the petitioner.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

RS

To

The Assistant Commissioner (CT) (FAC), Pollachi (Rural) Assessment Circle, Pollachi, Coimbatore District.

+1cc to Mr.R.Hemalatha, Advocate SR.No.36376
+1cc to Special Government Pleader (Taxes) SR.No.36733

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GN(21/06/2018)