IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.1603 of 2018
and W.M.P.No.2015 of 2018

T.K.Mahalingam, Proprietor,
M/s.R.V.Sundara Mudaliar & Co.,
No.167, Sathyamurthi Road,
Arni-632 301, Tiruvannamalai District. ... Petitioner

Vs.

1.The Deputy Commissioner,
Commercial Taxes,
Gandhinagar 5th Street,
Tiruvannamalai-606 601.

2.The Commercial Tax Officer,
Arni-632 301,
Tiruvannamalai District. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the impugned show cause notice issued by the second respondent in his office ref : GSTIN : 33BBOPM5134R1Z1, dated 08.01.2018 and to quash the same.

For Petitioner : Mr.P.Mani
For Respondents : Mr.M.Hariharan,
Additional Government Pleader

O R D E R

Heard Mr.P.Mani, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader for the respondents. With consent on either side, this writ petition is taken up for final disposal.

2. The petitioner has filed this writ petition challenging a notice issued by the second respondent dated 08.01.2018, calling upon the petitioner to show cause as to why the registration obtained by the petitioner, under the provisions of the Goods and Service Tax, Act (for brevity "GST Act") should not be cancelled. The allegation is that the petitioner, at the time of obtaining the registration under the GST Act, has given the consent letter from his mother Tmt.K.Susila dated

08.03.2012. This according to the officials is a false document on account of the fact that Tmt.K.Susila was a party to a registered document dated 08.07.2009, registered as Document No.5589/2009 in which 1/5th undivided share of the property belonging to the petitioner's mother Tmt.K.Susila and 1/6th of the undivided share in the property belonging to Tmt.B.Padmini were equally shared between the petitioner and his three brothers. Therefore, the second respondent would state that the consent letter given by the petitioner's mother much after the registered document dated 08.07.2009, is a false document. I am unable to countenance the stand taken by the second respondent. Admittedly, the signature of Tmt.K.Susila in the consent letter has not been disputed, nor there is any complaint from a third party of an act of forgery. Therefore, the statement, that it is a false document, is an incorrect stand.

3. Admittedly, suit is pending before the District and Sessions Court, Tiruvannamalai in O.S.No.35 of 2012, which is a suit for partition filed by the petitioner in which his three brothers are defendants. Thus, the second respondent has entered into the arena of a civil dispute which the authority should not do especially when the petitioner is also a joint owner and is not a third party to the suit property. Therefore, one more reason to interfere in the action of the second respondent is that for the very same allegation, two earlier notices were issued on 06.09.2012 and 05.10.2012.

4. For the first notice, the petitioner sent a detailed reply on 13.09.2012, for the second notice, the petitioner gave their explanation dated 29.10.2012 and for the third notice dated 27.08.2015, the petitioner has given their reply dated 07.09.2015. All the notices were based on the very same allegation and after giving reply, the second respondent did not take any action. The impugned notice has been issued after the petitioner obtained registration under the GST Act.

5. Thus, if the impugned notice is permitted to be proceeded further, it would amount to harassment of the petitioner. Therefore, this writ petition is allowed, the impugned notice is quashed and the respondent shall await the decision in the civil proceedings. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

abr

To

1.The Deputy Commissioner,
Commercial Taxes,
Gandhinagar 5th Street,
Tiruvannamalai-606 601.

2.The Commercial Tax Officer,
Arni-632 301,
Tiruvannamalai District.

+1 CC to Mr.P. Mani, Advocate sr 30947.
+1 CC to Spl. Govt. Pleader sr 31451.

W.P.No.1603 of 2018

VGII(CO)
SP(29/05/2018)