In the High Court of Judicature at Madras

Dated : 16.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.17928 of 2018 & WMP.No.21225 of 2018

S.Anandi ...Petitioner

Vs

The Assistant Commissioner (CT)
(FAC), Mettur Road Circle, Erode. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings in proceedings in N.K.1087/2018/A3 and quash Form No.4 Notice dated 23.5.2018 issued therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mrs.G.Dhana Madhri, GA

ORDER

Mrs.G.Dhana Madhri, learned Government Advocate 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 notice issued by the respondent dated 23.5.2018 informing the petitioner that the respondent proposed to proceed against the property owned by the petitioner for recovery of arrears of sales tax payable by the petitioner's husband, who was the proprietor of M/s.Palani Andavar Trading Company, Erode. The said M/s.Palani Andavar Trading Company represented by the proprietor namely the husband of the petitioner gave objections to the respondent on 25.6.2018 and the matter is now pending before the respondent.

3. The petitioner's case is that the property in question is her individual property and has been purchased from her personal income and after availing a loan from the Oriental Bank of Commerce to the tune of Rs.30 lakhs. It is submitted that the purchase of the property in question and the manner, in which, the funds were deployed, have been reflected in the income tax returns filed by the petitioner for the relevant assessment year. It is further submitted that when the petitioner has independent source of income and is an assessee under the provisions of the Income Tax Act, 1961, the respondent cannot, based on a discreet enquiry, come to a conclusion that that the petitioner's husband purchased the property in question in her name only with a view to defraud the interests of the Revenue by not paying the arrears of sales tax.

4. The learned counsel for the petitioner also submits that the husband of the petitioner had closed down the business and also surrendered the certificate and forwarded the same to the respondent by registered post along with the letter dated 10.4.2014, which has been received by the office of the respondent on 11.4.2014 vide postal acknowledgement card.

5. However, it is seen that the registration certificate is yet to be cancelled. In any event, the respondent should adjudicate the correctness of the stand taken by the petitioner, especially when the petitioner would state that she is an income tax assessee, that she has own sources of income and that the property in question has been purchased from out of her funds and by availing a loan from the Oriental Bank of Commerce. Without adjudicating the same, the respondent cannot, solely on the basis of a discreet enquiry done by the machinery available with the Department, proceed further.

6. Accordingly, the writ petition is disposed of by directing the petitioner to submit her objections to the impugned notice within two weeks from the date of receipt of a copy of this order. On receipt of the objections, the respondent is directed to afford an opportunity of personal hearing and also summon the petitioner's husband namely the proprietor of the said M/s. Palani Andavar Trading Company and after hearing both parties, pass a reasoned order on merits and in accordance with law. Till the process is completed, the impugned notice shall be kept in abeyance. No costs. Consequently, the connected WMP is closed.

7. The learned counsel for the petitioner submits that her husband closed down the business and also surrendered the registration certificate and that the notices have been received by the petitioner's husband, for which, he had given the reply dated 25.6.2018 for the assessment years from 2009-10 to 2013-14.

8. In any event, as the petitioner's husband is directed to appear before the respondent during the course of personal hearing, it is open to the respondent to proceed further in accordance with law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT) (FAC),
Mettur Road Circle,
Erode.

+1cc to Mr.B.Raveendran, Advocate Sr.47413
+1cc to the Special Government Pleader Sr.47165

WP.No.17928 of 2018&
WMP.No.21225 of 2018

gj[co]
srg 6/8/2018