IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No. 26414 of 2015
and Crl.M.P.Nos.1 & 2 of 2015

M/s. Tata Chemicals Ltd.
Represented by Mr.Hasan I Alvi .. Petitioner

Vs.

Additional Deputy Commercial Tax Officer (IW)
Commercial Taxes Department,
Pondicherry.
.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pursuant to the complaint in S.T.R.No.865 of 2004 on the file of the learned Judicial Magistrate II Karaikal (Union Territory of Pondicherry) and quash the charges against the petitioner/accused No.7.

For Petitioner : Mr.G.KalyanJhabakh
for M/s.Surana and Surana

For Respondent : Mr.V.Balamurugane
Additional Public Prosecutor(Pondy)

O R D E R

This Criminal Original Petition has been filed to call for the records pursuant to the complaint in S.T.R.No.865 of 2004 on the file of the learned Judicial Magistrate II Karaikal (Union Territory of Pondicherry) and quash the charges against the petitioner/accused No.7.

2. Heard the submissions made on either side and perused the materials available on record.

3.Considering the Rival contentions, it will be useful to refer to the provisions contained in sections 2 (g), 2(h) (iii) and (v) and section 29 and 49(2) (b) of the PGST Act which read as follows:-

> "2(g): "Casual Trader" means a person who has, whether as principal agent, or in any other capacity, occasional

transactions of a business nature involving the buying, selling, supplying or distributing of goods in the Union Territory, whether for cash, or deferred payment, or for commission, remuneration or other valuable consideration, and who does not reside or has no fixed place of business within the Union Territory.

2(h): " Dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for over deferred payment, or for commission, remuneration or other valuable consideration and includes.

2(h) (iii): A commission agent, a broker and del credere agent or an auctioneer or any other mercantile agent, by whatever name called; who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal.

2(h)(v): a person engaged in the business of transfer otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration.

29. Further mode of recovery: The assessing authority may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to the assessing authority) require any person from whom money is due or may become due to the dealer or any person who holds or may subsequently hold money for on account of the dealer to pay to the assessing authority, either forthwith upon the money becoming due or being held at or within the time specified in the notice (not being before the money becomes dues or is held) so much of the money as is sufficient to pay the amount due by the dealer in respect of arrears of tax or fee or the whole of the money when it is equal to or less than arrears of tax or fee.

(2) The assessing authority may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any person making any payment in

compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer and the receipt of the assessing authority shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount referred to in the receipt.

(4) Any person making any payment to the dealer after receipt of the notice referred to in this section shall be personally liable to the assessing authority to the extent of the payment made or to the extent of the liability of the dealer for the amount due under this Act, whichever is less.

(5) Where any person to whom a notice under this section is sent objects to it on the ground that the sum demanded or any part thereof is not due by him to the dealer, or that he does not hold any money for or on account of the dealer, then nothing contained in this section shall be deemed to require such person to pay the sum demanded or any part thereof to the assessing authority.

(6) Any amount which a person is required to pay to the assessing authority or for which he is personally liable to the assessing authority under this section shall, if it remains unpaid, be a charge on the properties of the said person and may be recovered as if it were an arrears of land revenue.

49(2): Any person who:

(b) Fraudulently evades the payment or any tax assessed on him or any fee or other amount due from him under this Act, or”

4. The main issue that arises for consideration in the above quash petition is that as to whether the petitioner herein, who is A6 can be prosecuted for the offence under Section 200 Cr.P.C and Section 10 r/w. Section 9 of the Central Sales Tax Act, 1956 and Sections 27(2)(b), 27(3) and 28 of the PGST Act and for deciding the same, it is not necessary to consider as to whether they fall under the definition of 'dealer'. It has to be pointed out that in the entire complaint it has not been alleged by the respondent that A6 is registered dealer on the file of the authorities under the PGST Act.

5. The contention of the learned counsel for the petitioner is that for prosecuting a person under section 49 (2)(b) of the Act, the following conditions should be satisfied, namely, that such person should have fraudulently evaded the payment of tax assessed on him or any fee or any other amount is due from him under the Act. According to the learned counsel no assessment order has been passed as against A1, who is the dealer on the file of the sales tax authorities of the Union Territory of Pondicherry. Similarly, as the petitioner herein has not been treated by the authorities concerned as dealer, the question of passing any assessment order does not arise as against him. Therefore, the question of fraudulently evaded the payment of tax does not arise. Similarly, it is not the case of the respondent that any fee is payable by A6 under the Act.

6.The contention of the Additional Public Prosecutor (Pondicherry) is that under section 29 of the Act, the sales tax authorities are empowered to recover any amount due from the assessee from any other person who owes money to the dealer by issuing a notice calling upon such person to pay the amount payable by such person to the sales tax department and if such demand is not complied with then such person is liable for persecution.

7. A reading of the averments in the complaint, as pointed out above, do not show that the assessment order was passed against the first accused. In the absence of passing of any assessment order and in the absence of any averment in the complaint that any amount was due from A6 and in the absence of any notice calling upon A6 to pay the amount payable by him to A1 and he has failed to comply with such demand, the question of violation of section 29 of the Act does not arise. When there is no such violation of section 29 of the Act, then the provisions contained under Section 200 Cr.P.C and Section 10 r/w. Section 9 of the Central Sales Tax Act, 1956 and Sections 27(2)(b), 27(3) and 28 of the PGST Act have no role to play as against the petitioner herein. Therefore, the contention of the learned counsel for the petitioner is well founded and merits acceptance.

8. For the aforesaid reasons, the above Crl.O.P is allowed and accordingly, he is allowed quashing all further proceedings in S.T.R.No.1402 of 2005 on the file of the Judicial Magistrate No.II, Karaikal as against the petitioner herein alone. Consequently, connected Miscellaneous Petitions are closed.

9. In view of the above submission, it is made clear that the quashing of the proceedings in STR.No.1402 of 2005 as against the petitioner shall not stand in the way of the

respondent from prosecuting the petitioner in respect of the offences arising under IPC.

Sd/-
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

mpa/lpp

To

1.The Judicial Magistrate II, Karaikal.
2.Additional Deputy Commercial Tax Officer (IW)
Commercial Taxes Department,
Pondicherry.

3.The Public Prosecutor
Puducherry.

+1cc to M/s.Surana and Surana , Advocate SR.No. 21066

Crl.O.P.No. 26414 of 2015
and Crl.M.P.Nos.1 & 2 of 2015

A.SK(22/04/2019)