IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.1865 of 2013
& W.P.No.16721 of 2012

M/s.Sree Vaduganathar Spinning Mills,
Rep.by its Partner-N.Selvaraj
...Petitioner in WP.No.1865 of 2013

Jothimani ...Petitioner in WP.No.16721 of 2012

--Vs--

1.The Commercial Tax Officer,
Palladam Assessment Circle,
Palladam

2.Tmt.S.Jothimani ... Respondents in WP.No.1865 of 2013

1.The Commercial Tax Officer
Palladam Assessment Circle,
No.10, Pollachi Road,
Palladam Post, Pin 641016
Coimbatore District

2.The Joint Commissioner (CT)
Commercial Tax,
Coimbatore Division, Coimbatore

3.M/s.Sree Vaduganathar Spinning Mills
Rep.by its partner Selvaraj
... Respondents in WP.No.16721 of 2012

Prayer in WP.No.1865 of 2013: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorari, calling for the records in his impugned notice in Ref.No1/2012/A2 dated 27.12.2012 and quash the same.

Prayer in WP.No.16721 of 2012: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified

Mandamus, calling for the records relating to order dated 04.04.2012 made in R.P.No.1 of 2012 on the file of the Joint Commissioner (CT) Coimbatore Division and quash the same and consequently forbear the respondent from carrying on business so far as not to affect the rights of the petitioner.

For Petitioner : Mr.S.Rajasekar
in W.P.No.1865 of 2013
P.Mathivanan
in WP.No.16721 of 2012

For Respondents : Mr.M.Hariharan, GA for R1
Mr.P.Mathivanan for R2
in W.P.No.1865 of 2013
Mr.S.Rajasekar for R2
in WP.No.16721 of 2012

O R D E R

Writ Petition No.16721 of 2012 has, in my view, been rendered infructuous. The petitioner therein has challenged order dated 04.04.2012 on the primary ground that no opportunity has been afforded to her by the Joint Commissioner prior to passing of the impugned order. However, the Joint Commissioner has merely remanded the proceedings to the file of the Commercial Tax Officer, Palladam, who has been specifically directed to issue a notice to the petitioner prior to completion of proceedings.

2. Mr.M.Hariharan, learned Government Advocate appearing for the Commercial Taxes Department also confirms that such notice, dated 25.04.2012, has been issued to the petitioner and the records available with him do not reflect any response from the petitioner (in W.P.No.16721 of 2012) to such notice.

3. In any event, since the matter is before the Commercial Tax Officer, who has issued a notice to the petitioner, I am of the view that the prayer sought for in this writ petition need not be pursued as the petitioner could well appear before the Commercial Tax Officer to advance her submissions. This Writ Petition is dismissed and the petitioner directed to comply with the direction issued to her in paragraph 8 of this order.

4. As far as W.P.No.1865 of 2013 is concerned, the petitioner therein challenges notice dated 27.12.2012, which has been issued by the Commercial tax officer pursuant to order of

Joint Commissioner dated 04.04.2012. The primary quarrel as against notice dated 27.12.2012 is that though styled as a notice, the Officer appears to have pre-determined the issue of cancellation of registration and has called upon the petitioner to surrender the registration certificates and intimate stoppage of functioning of the mill under threat that further action would be taken, in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act').

5. The Joint Commissioner in order dated 04.04.2012, has set aside order dated 07.12.2011 and remanded the proceedings to the Commercial Tax Officer for examination in the light of the licences granted by TANGEDCO and other local bodies as well as any order from the Civil Courts that may be produced by S.Jothimani (petitioner in W.P.No.16721 of 2012).

6. Pursuant to the remand by the Joint Commissioner on 04.04.2012, the Commercial Tax Officer has issued a notice on 25.04.2012 calling upon the petitioner (in W.P.No.1865 of 2013) to produce the licences issued by TANGEDCO as well as by local bodies within 15 days of receipt of the notice, failing which the order of cancellation of registration would be confirmed without further reference to the petitioner. On 16.05.2012, the petitioner has responded enclosing, (extracted as per his reply), the following 7 documents.

> '1) Electricity Board card Xerox copy in the name of "N Selvaraj" in connection No:624 (New No.060-003-581)
>
> 2) Copy of the EB letter in No.:615/12 dt 27.03.2012, stating that EB connection is in the name of "N Selvaraj" and other partners namely Smt.Karunaiammal, Thiru N Sundarraj & Tmt S Jothimani, HAVE GIVEN THEIR NO OBJECTION to give the connection in the name of "N Selvaraj"
>
> Further EB has stated that the security deposit is in the name of "N Selvaraj"
>
> 3) No objection document copy dt 27.05.2005, issued by the above other partners in favour of "N Selvaraj" in which they have stated that the EB connection may be given in the name of "N Selvaraj"
>
> 4) Copy of the EB letter No 389/11 dt 20.05.2011, stating that the Security deposit amount of Rs.4,50,780/- is in the name of "N Selvaraj" as on 31.03.2011.
>
> 5) Professional tax Receipt No:9120 dt 09.03.2012, in the name of "Sri Vaduganathar Spinning Mills"-- Professional tax paid Rs.2700 for the

year ended 31.03.2012 (No 44) issued by Peedampalli Panchayat

6) Property tax Rt No:42409 dt 09.03.12, in the name of "N Selvaraj" for the Door No 5/80C- Amount paid Rs.4400 for the year ended 2011-12, issued by the Peedampalli Panchayat Office

7) Water Tax Paid vide Rt 58156/09.03.12, for Door No 5/80 C, Peedampalli, receipt issued by Peedampalli Panchayat – amount paid Rs.480, in the name of "N Selvaraj" '

In conclusion, the petitioner states that since the aforesaid documents stood in his name, the registration may be revived.

7. It is after a gap of seven months that the impugned notice/order has been issued. The Notice/Order does not reflect any consideration of the documents filed by the petitioner and the officer reiterates that licences issued by TANGEDCO and local bodies as specifically sought for, had not been produced. Be that as it may, the petitioner has supplied some documents under cover of its letter dated 16.05.2012, that the Assessing Officer should have taken into account and considered prior to rejection of the petitioners' request.

8. Thus, and In the light of the discussion above, the impugned notice dated 27.12.2012 shall be treated as a further show cause notice. Both petitioners shall appear before the Assistant Commissioner (ST), Palladam-II Assessment circle, on 14^{th} of October, 2019 along with applicable licences as well as relevant orders of competent courts, before which civil proceedings are pending. No further notice need be issued in this regard. After hearing the parties and considering documents already filed as well as any further that may be filed, an order shall be passed by the Commercial Tax Officer within a period of eight weeks, that is on or before 16.12.2019.

9. W.P.No.1865 of 2013 is disposed in the aforesaid terms. No costs.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

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To

1.The Commercial Tax Officer,
Palladam Assessment Circle, Palladam

2.The Commercial Tax Officer
Palladam Assessment Circle,
No.10, Pollachi Road,
Palladam Post, Pin 641016
Coimbatore District

3.The Joint Commissioner (CT)
Commercial Tax,
Coimbatore Division, Coimbatore

4. Assistant Commissioner (ST),
Palladam-II Assessment circle

+1cc to Mr.M.Hariharan, Advocate SR.No.87022

+1cc to Special Government Pleader SR.No.81750

W.P.Nos.1865 of 2013
& W.P.No.16721 of 2012

MG(CO)

GMY(11/10/2019)