IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 28.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.24213 of 2015

A.Padmanabhan ...Petitioner

Vs

The Assistant Commissioner (CT),
Avinashi Assessment Circle,
Avinashi. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the respondent in Ref.No.279/2008/A3 and quash the impugned proceedings dated 15.07.2015 passed therein.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.V.Haribabu,
Additional Government Pleader

O R D E R

When the petitioner had earlier challenged the assessment order pertaining to the assessment year 2002-03 in W.P.No.15360 of 2005, this Court, by an order dated 03.05.2005, had granted an order of interim stay.

2. It is the submission of the learned counsel for the petitioner that inspite of this interim order granted, the respondent had attached the petitioner's properties, which necessitated him to make a requisition to the respondent seeking for release of the encumbrance.

3. By an impugned notice dated 15.07.2015, the respondent had informed the petitioner that they had not received the Judgment of the High Court granting interim stay. It is seen that the number mentioned in the impugned notice does not pertain to the writ petition in W.P.No.15360 of 2005 challenging the assessment order.

4. The learned Additional Government Pleader appearing for the respondent submits that the number evidenced in the impugned notice as W.P.No.634 of 2008 is a mistake and that it should read as M.P.No.634 of 2008, which has been filed for extension of the interim order granted by this Court in W.M.P.No.16779 of 2005 in W.P.No.15360 of 2005.

5. At this juncture, the learned counsel for the petitioner submitted that this Court had passed final orders in W.P.No.15360 of 2005 on 14.06.2016, directing the respondent to pass final orders on the assessment proceedings pertaining to the year 2002-03. The said order reads as follows:-

> Heard Mr.R.L.Ramani, learned senior counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.
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> 2. The petitioner, who is a registered dealer under the Tamil Nadu General Sales Tax Act, 1959, has challenged the impugned Order of Assessment dated 31.03.2005. Though several issues have been raised in the grounds with regard to the Order of Assessment, the only issue which the petitioner seeks to canvass before this Court is with regard to the reliance placed by the Assessing Officer on certain invoices given by a former employee of the petitioner by name K.Sampath Kumar.
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> 3. When pre-assessment notice was issued to the petitioner based on such a document, the petitioner, while submitting their objection, pointed out that they would like to state that their ex-employee stooped to the level of fabricating and sending records, which were not used by them and no crossexamination of either the petitioner or the buyers noticed in such invoices was made with the result that the proposed fixation of alleged suppression of Rs.27,21,472/- had only been made without following the principles of natural 3 justice and without affording an opportunity to the petitioner to cross-examine the buyers noted in the bills.
>
> 4. Though such a specific averment was made in the objection, the Assessing Officer, while referring to the objection, conveniently omitted to mention a few lines in the objection and mentioned only the opinion expressed by the petitioner as against the former employee. If according to the respondent the basis of revision of assessment is based only on those invoices and documents handed over by the former employee K.Sampath Kumar, then the petitioner should

have been afforded an opportunity to revert such a stand. This has not been done by the respondent while computing the assessment. Therefore, the impugned order necessarily call for interference.

5. However, at this distant of time, calling upon the respondent to produce K.Sampath Kumar for cross-examination is not possible. However, as the proposed revision is based on the invoices handed over by K.Sampath Kumar, the respondent shall make available the copies of those invoices, so as to enable the petitioner to verify the contents and thereafter, the respondent shall afford an opportunity of personal hearing to the petitioner and permit them to place records to substantiate their claim that the documents submitted by their former employee K.Sampath Kumar are fabricated 4 documents. After hearing the parties, the respondent shall pass fresh orders on merits and in accordance with law. It is made clear that this Court interfered only with regard to the issue relating to the finding which was based on the invoices said to have been given by K.Sampath Kumar and in respect of other issues, the learned senior counsel appearing for the petitioner, on instructions, submitted that those are smaller issues and the petitioner is not contesting the same.

In view of the same, the writ petition is partly allowed and the respondent is directed to pass fresh orders in terms of the aforesaid direction. No costs. Consequently, the connected miscellaneous petition is closed.

6. In view of the final order being passed in the earlier writ petition in W.P.No.15360 of 2005 challenging the assessment order, no effective orders can be passed in the present writ petition, which emanates from an interim order granted in the earlier writ petition. Since the respondent has already been directed to pass final orders in the earlier writ petition, the same shall be duly complied with by the respondent herein in terms of the said order in W.P.No.15360 of 2005. Accordingly, the present Writ Petition stands disposed of. No costs.

7. At this juncture, the learned Additional Government Pleader submitted that in view of the pendency of the present writ petition in W.P.No.24213 of 2015, the earlier order of this Court passed in W.P.No.15360 of 2005 could not be complied and therefore, the proceedings have been kept in abeyance. Now that the present writ petition is being disposed of, the respondent herein shall endeavour to complete the re-assessment

proceedings, as directed by this Court in the earlier order in W.P.No.15360 of 2005, within a period of 8 weeks from the date of receipt of a copy of this order.

hvk

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT),
Avinashi Assessment Circle,
Avinashi.

+1cc to Mr.B.Raveendran, Advocate, SR.No.74972
+1cc to the Special Govt.Pleader,(Taxes),Vide Sr.No.74943

W.P.No.24213 of 2015

Kak(14/10/2019)