IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.14285 of 2019
and
W.M.P. No.14370 of 2019

M/s.Sri Maheejaksha Oils,
Rep. by its proprietrix,
Tmt.Kancherla Bala Saroja Bindu Rekha.
...Petitioner

Vs

1.The Deputy Tahsildar (Rev),
Yanam.

2.The Deputy Commercial Tax Officer,
Yanam.

3.Union Territory of Puducherry,
Rep. by its
Secretary to Commercial Tax Department,
Puducherry. ... Respondents

....

Prayer: 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 relating to the distraint order dated 03.04.2019 on the file of the 1st respondent quash the same.

For Petitioner : Mr.V.Elangovan

For Respondents : Mr.J.Kumaran
Additional Government Pleader (Puducherry)

O R D E R

The petitioner challenges a distraint order dated 03.04.2019 passed by the Deputy Tahsildar (Revenue), Yanam (R1). The petitioner is an assessee under the provisions of the Puducherry Value Added Tax Act, 2007, (in short 'PVAT Act') on the file of the Deputy Commercial Tax Officer, Yanam (R2).

2. Admittedly, the petitioner filed a return of turnover for the month of January 2018 returning turnover liable to tax but without having remitted the tax due the return. Thus, the Second Respondent (R2) appears to have computed the outstanding liability of the petitioner for the months of January and February, adopting the figure of tax as per the return filed by the petitioner for January 2018 and computing the amount of tax on the basis of the information received from the Indian Oil Corporation, of whom the petitioner is a dealer, for the month of February 2018. A total outstanding of Rs.48,09,344/- was arrived at and the impugned distraint order issued to the petitioner on 03.04.2019. The impugned order is challenged solely on the basis that the procedure stipulated under the Puduchery Revenue Recovery Act, 1970 (in short 'RR Act') has not been followed.

3. Heard Mr.Elangovan, learned counsel for the petitioner and Mr.J.Kumaran, learned Additional Government Pleader (Puducherry) for the respondents.

4. No doubt, the petitioner has outstanding dues of admitted tax for the months of January and February 2018. The return of turnover filed for January 2018 reveals a due of Rs.24,90,560/-. As far as the month of February is concerned, the petitioner has filed a return belatedly, on 15.06.2018 after receipt of the impugned distraint order, returning turnover and outstanding dues thereupon of a sum of Rs.24,31,325/-. This amount is, in fact, in excess of what had been determined as due for the month of February by R2 in the impugned distraint order.

5. The provisions of Section 37 of the PVAT Act, provide for the payment and recovery of tax. Sub-Section (3) thereof deals with the recovery of tax or fee assessed or of any other amount due under the Act, as if it were an arrear of land revenue under the law for the time being in force in that behalf, i.e. the Tamil Nadu Revenue Recovery Act, 1864 ('RR Act'). Thus the outstandings would have to be collected as though it bore the character of land revenue, in terms of the procedure set out under the RR Act.

6. The impugned distraint order is in Form I and relates to Section 8 of the RR Act. However, Section 8 of the RR Act, provides for recovery of movable property after seizure and sale thereof. The provision invoked and consequently the procedure followed is thus incorrect. The asset involved in the present case is immovable property and the applicable provision in that

regard is Section 25 which deals with attachment of land and mode of service in that regard. Section 25 of the RR Act, reads as follows:

> 'Demand to be served prior to attachment of land and mode of service
>
> 25. (1) Before a Collector, or other officer empowered by him in this behalf, proceeds to attach the land of the defaulter, or buildings thereon, he shall cause a written demand to be served upon the defaulter, specifying the amount due, the land in respect of which it is claimed the name of the party in arrear, the batta due to the person who shall serve the demand, and the time allowed for payment which shall be fixed with reference to the distance from the land on which the arrear is due to the place at which the money is to be paid.
>
> (2) Such demand shall be served by delivering a copy to the defaulter, or to some adult male member of his family at his usual place of abode, or to his authorised agent, or by affixing a copy thereof on some conspicuous part of his last known residence or on some conspicuous part of the land about to be attached.'

7. In the present case, admittedly and as fairly stated by Mr.Kumaran, no notice by way of written demands has been served upon the defaulter by the person empowered in this behalf under Section 42 of the PVAT Act that provides for special powers for recovery. Thus, the impugned distraint order, issued without following the procedure stipulated under the RR Act, is an abuse of process and is liable to be quashed, and I do so. Needless to say, procedure for recovery set out under the RR Act, has to be strictly and scrupulously followed and there could be no compromise in regard to the same. The Revenue is directed to issue notice in terms of Section 25 of the RR Act, within a period of two weeks from today and to proceed with all other action for recovery strictly in accordance with law and in line with the returns of turnover filed by the petitioners for the months of January and February 2018.

8. Accordingly, the impugned distraint order is set aside and the writ petition is allowed. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rkp

To

1.The Deputy Tahsildar (Rev),
Yanam.

2.The Deputy Commercial Tax Officer,
Yanam.

3.The Secretary to Commercial Tax Department,
Union Territory of Puducherry,
Puducherry.

+1cc to Mr.S.Doraisamy , Advocate SR.No. 101680
+1 cc to Government Pleader Sr.No. 101800

W.P. No.14285 of 2019
and
W.M.P. No.14370 of 2019

A.SK(21/01/2020)