IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.16962 of 2019

and W.M.P.Nos.16526 of 2019

A.P.M.Mammootty
.. Petitioner

vs.

1.The Assistant Commissioner (CT)
Choolai Assessment Circle
Greams Road
Chennai - 6.

2.The Assistant Commissioner (ST)
Amaindakarai Assessment Circle
Anna Nagar (East)
Chennai - 102.
.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records on the files of 2nd respondent in Rc.No.382/2019/A3 dated 16.04.2019 received on 20.04.2019 and quash the same as being without jurisdiction and contrary to the principles stated by Madras High Court in 23 VST 82 (R.Vasinathan and others Vs. Commercial Tax Officer (FAC), Ambattur Assessment Circle, Villivakkam, Chennai and another) and hence invalid and illegal and pass such other order or orders as the Hon'ble Court may deem fit and appropriate in the circumstances of the case and thus render justice.

For Petitioner : Mr.V.Srikanth

For Respondents : Mr.M.Hariharan,

Additional Government Pleader

ORDER

Mr.V.Srikanth, learned counsel on record for writ petitioner is before this Court. Mr.M.Hariharan, learned 'Additional Government Pleader' ('AGP' for brevity) accepts notice on behalf of both the respondents. To be noted, there are two respondents in this writ petition and both the respondents are official respondents.

2. With consent of learned counsel on both sides, main writ petition itself is taken up and is being disposed of.

3. Short facts imperative for appreciating instant order are as follows:

a) 'Diamond Flush Doors Private Limited' ('said company' for brevity), a Private Limited company incorporated in India, is a dealer registered with appropriate authorities under 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity).

b) Writ petitioner, who is a natural person and is an individual submits that he was a Director in the said company.

c) It is writ petitioner's specific case that he has sold all his shares in the said company to third parties in August 2011 and is not in the Board of the said company any more.

d) Under aforesaid circumstances, Revenue had sent demand notices and 'show cause notices' ('SCNs' for brevity) to the writ petitioner for what according to the Revenue are dues of said company qua tax and 'Input Tax Credit' (ITC for brevity).

e) Suffice to say that aforesaid demand notices and SCNs pertain to five financial years viz., 2007-08 to 2011-12.

f) First of the demand notices and show cause notices are dated 21.09.2016.

g) Thereafter writ petitioner has sent certain communications to the first respondent, inter alia stating that he has sold all his shares in the said company to third parties and is not in the Board any more.

h) Demand notice which captioned 'Most

Urgent Notice' dated 16.04.2019, bearing reference Rc.No.382/2019/A3 shall hereinafter be referred to as 'impugned demand notice' for the sake of brevity, convenience and clarity.

i) Assailing the impugned demand notice, instant writ petition has been filed by the aforesaid natural person/individual.

4. The primary and pivotal submission of learned counsel for writ petitioner is that dealer under TNVAT Act is a juristic person viz., a Private Limited Company and the Revenue ought not to have issued the impugned demand notice to the writ petitioner, who is a natural person, particularly when it is the specific case of the writ petitioner that he has sold all his shares in the said company and is not in the Board any more.

5. Per contra, learned AGP, who has accepted notice on behalf of both the respondents submitted that the financial years, for which the impugned demand notices have been issued are five financial years i.e., 2007-08 to 2011-12, whereas even according to writ petitioner, he has sold all his shares and is not in the Board from August 2011. In the light of the order, which this Court proposes to pass, this Court does not express any opinion on merits on this aspect of the matter at this juncture.

6. Post impugned demand notice, writ petitioner has sent a communication dated 23.04.2019 to the second respondent. However, there is no disputation before this Court that even this communication dated 23.04.2019, sent to the second respondent by writ petitioner post impugned notice, has not enclosed supporting documents (in the nature of Form 35 from jurisdictional Registrar of Companies etc.,) to support the plea of the writ petitioner that he has sold all his shares in the said Company in August 2011 and is not in the Board any more.

7. In the light of the undisputed aforesaid position, which emerges in the hearing today, the following order is passed:

a) Writ petitioner shall resubmit the aforesaid communication dated 23.04.2019 (which shall be treated as representation) to the second respondent together with all supporting documents i.e., inter alia copies of documents from the office of jurisdictional Registrar of Companies within a fortnight from the date of receipt of a copy of this order;

b) On receipt of aforesaid representation together with supporting documents, second respondent shall consider the same and pass orders on the same on merits in accordance with law within a fortnight therefrom;

c) To be noted, writ petitioner shall not send a fresh representation or add or subtract to the representation dated 23.04.2019, but shall only enclose supporting documents.

d) On second respondent passing orders on merits on the resubmitted communication dated 23.04.2019, the same shall be communicated to writ petitioner under due acknowledgement, within seven working days from the date of such disposal.

e) Until the second respondent passes an order on the resubmitted communication dated 23.04.2019 (together with supporting documents) and until the same is communicated to the writ petitioner under due acknowledgement within the aforesaid time, the impugned demand notice shall be kept in abeyance.

f) Subject to the orders which the second respondent shall pass, it will be open to the respondent to either pursue the impugned demand notice which may stand revived or issue a revised demand notice or drop the proceedings depending on the orders which the second respondent passes.

Writ Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsm

To
1.The Assistant Commissioner (CT)
Choolai Assessment Circle
Greams Road
Chennai - 6.

2.The Assistant Commissioner (ST)
Amaindakarai Assessment Circle
Anna Nagar (East)
Chennai - 102.

+1 cc to Spl Government Pleader Sr.No. 52482
+1cc to Mr.V.Srikanth , Advocate SR.No. 52496

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A.SK(18/09/2019)