BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **25.07.2019**
CORAM:
THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
W.P.(MD)No.5784 of 2016
and
W.M.P.(MD)No.5192 of 2016

V.Palaniappan ... Petitioner

/Vs./

The Commercial Tax Officer,
Manapparai, Trichy District. ... Respondent

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the proceedings, viz., the Distraint Order under Ref No.NA1058/2009/A3 dated 25.02.2016 of the respondent herein and quash the same.

For Petitioner : Mr.ARL.Sundaresan
Senior Counsel
for Mr.AL.Ganthimathi
For Respondent : Mr.R.Murugan
Additional Government Pleader

ORDER

The writ petitioner challenges a distraint order attaching property that admittedly stands in the name of the petitioner in respect of the Commercial Tax arrears of his late wife who was carrying on business under the name and style of 'Idhayam Agencies'.

2. The sole proprietary, Idhayam Agencies had challenged assessments dated 20.05.2009 for the periods 2006-07 and 2007-08. The Writ Petitions had been heard along with a batch of cases and disposed on 29.10.2015. The relief sought by the other petitioners in the batch was a Writ of Declaration challenging the vires of the provisions of Sections 19(1), 19(10) and 19(11) of the TamilNadu Value Added Tax Act, 2006 and Rule 10(2) of the TamilNadu Value Added Tax Rules, 2007. Following the judgment of the Division Bench in W.P.(MD)No.902 of 2009 and batch dated 17.07.2013, the writ petitions were dismissed upholding the validity of the statutory provisions.

3. Pursuant to the aforesaid order, notice dated 05.01.2016 has been issued to the present petitioner calling upon him to remit the arrears of commercial taxes, to which, admittedly, the petitioner has not responded resulting in the impugned distraint

order having been passed.

4. Admittedly, the respondent has not afforded any opportunity to the petitioner to make its submissions in regard to the coercive recovery initiated and has, under notice dated 05.01.2016, merely called upon it to remit the arrears of sales tax.

5. In these circumstances, I am of the view that notice dated 05.01.2016 should be treated as a show cause notice and I order so. The petitioner will file its objections to the same, within a period of four weeks from today. After hearing the petitioner and considering any materials that may be relied on by him in support of his stand, appropriate orders, in accordance with law will be passed by the respondent, within a period of four weeks thereafter. The impugned distraint order is kept in abeyance till such time and shall be subject to final orders to be passed by the authority.

6. This Writ Petition is disposed of in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Commercial Tax Officer,
Manapparai,
Trichy District.

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-77802[F] dated 26/07/2019)

+1 CC to M/s.SPL GP (SR-77979[F] dated 26/07/2019)

W.P.(MD)No.5784 of 2016
Dated:
25.07.2019

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