IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 38939 of 2015
and
M.P. Nos. 1 & 2 of 2015

M/s. Coimbatore Steel Furniture
Represented by its Proprietor
A.V. Natarajan
No. 160, Raja Veethi,
Ganapathy, Coimbatore - 6. ... Petitioner

Vs

1. State of Tamil Nadu
   Represented by its Secretary,
   Commercial Taxes Department,
   Secretariat, Chennai - 9.

2. The Principle Secretary cum Commissioner,
   Commercial Taxes Department,
   Chennai - 600 005.

3. The Joint Commissioner (Commercial Taxes)
   Balasundaram Road,
   Coimbatore - 18.

4. The Assistant Commissioner (Commercial Taxes)
   Balasundaram Road,
   Ganapathy Circle, Coimbatore - 18. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Impugned Notice dated 30.11.2015 on the file of the Fourth Respondent and quash the same and consequently direct the Fourth Respondent to consider the Petitioner's representation dated 14.08.2015.

For Petitioner : Mr. I. Jesu

For Respondents : Mr. A.N.R. Jayaprathap
Government Advocate

ORDER

This writ petition has been filed by the Petitioner seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the Impugned Notice dated 30.11.2015 on the file of the Fourth Respondent and quash the same and consequently direct the Fourth Respondent to consider the Petitioner's representation dated 14.08.2015.

2. The Petitioner has challenged the Impugned Auction Notice dated 30.11.2015 in respect of arrears of tax due from Petitioner amounting to a sum of Rs.47,78,723/- for the period between 1991-1992 to 1995-1996. The details of arrears of tax from the Petitioner are as follows:-

Year	Tax	Surcharge	Addl Tax	Penalty	Total
1991-92	3,922.00	492.00	--	3,310.00	7,724.00
1992-93	17,824.00	2,278.00	--	15,076.00	35,178.00
1993-94	32,194.00	4,163.00	--	52,635.00	88,992.00
1994-95	95,466.00	12,570.00	5,555.00	1,70,386.00	2,83,977.00
1995-96	13,38,856.00	1,73,986.00	2,32,299.00	26,17,711.00	43,62,852.00
Total	14,88,262.00	1,93,489.00	2,37,854.00	28,59,118.00	47,78,723.00

From the Table, it is noticed that bulk of tax that is due from the Petitioner is for the Assessment Year 1995-1996. It appears that the Petitioner had obtained sales tax registration before the Devakottai Deputy Commercial Tax Officer vide Registration Certificate No.827395 with effect from 04.01.1994.

3. The Petitioner's branch at 160-162, Raja Street, Ganapathy, Coimbatore was inspected by the Enforcement Wing on 22.01.1996 and certain incriminating documents relating to his business were obtained.

4. It is pursuant to this inspection, re-assessment notice was issued which culminated in the Assessment Order dated 29.01.1998 for the Assessment Years 1991-1992 to 1995-1996. The said assessment was made on best Judgment under Section 16 of the Tamil Nadu General Sales Tax Act, 1959.

5. The Petitioner has not filed any appeal against the said order before the Appellate Commissioner. Under these circumstances, the Revenue Recovery Proceedings were initiated against the Petitioner. Earlier an auction notice dated 22.01.2009 was issued to the Petitioner proposing to auction of the property on 29.01.2009. The Petitioner filed a suit before the District Munsif Court at Coimbatore, dated 07.12.2009 in O.S. No. 186 of 2009.

6. However, the Petitioner allowed the suit to be dismissed for non-prosecution on 07.12.2009. There are no records to show that the Petitioner had filed any application to restore the suit to the file of the aforesaid Court.

7. Thereafter, once again Revenue Recovery Proceedings were initiated and notices dated 10.07.2015 and 14.07.2015 were issued. The Petitioner filed suit against the notice dated 10.07.2015 before the Ist Additional Disrict Munsif Court at Coimbatore in O.S. No. 1452 of 2015 on 08.07.2015.

8. Thereafter, Notice dated 14.07.2015 was challenged in W.P. No. 22289 of 2015. By an order dated 24.07.2015, this Court without going into the merits of the case, directed the Petitioner to file objections/explanations to the said notice dated 14.07.2015 and to pass appropriate orders within a period of two weeks.

9. O.S. No. 1452 of 2015 was allowed to be dismissed for non-prosecution on 07.10.2017.

10. The Petitioner, thereafter filed representation on 14.08.2015 which has culminated in the impugned Order. In all these proceedings, the factum of the Assessment Order dated 29.01.1998 has been suppressed. Instead it has been stated that the Petitioner obtained Registration Certificate only on 04.01.1994 and therefore there is no basis on which the demand could be made for the Assessment Years 1991-1992 to 1994-1995.

11. From the Table which has been extracted in Paragraph 2 of this Order, it is evident that bulk of the demand pertains to the Assessment Year 1995-1996. Since the Petitioner has not filed any appeal against the said Assessment Order, I am of the view the persistent attempt of the Petitioner to stall the recovery proceedings can no longer be permitted.

12. It is further noticed that at the time of admission of this Writ Petition, the Petitioner was directed to deposit a sum of Rs.25,00,000/-. However, that amount also has not been paid till date.

13. Under these circumstances, the present Writ Petition filed by the Petitioner deserves to be dismissed.

14. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
   State of Tamil Nadu,
   Commercial Taxes Department,
   Secretariat, Chennai - 9.
2. The Principle Secretary cum Commissioner,
   Commercial Taxes Department,
   Chennai - 600 005.
3. The Joint Commissioner (Commercial Taxes)
   Balasundaram Road,
   Coimbatore - 18.
4. The Assistant Commissioner (Commercial Taxes)
   Balasundaram Road,
   Ganapathy Circle, Coimbatore - 18.

+1cc to Mr.I.Jesu, Advocate, S.R.No.15635
+1cc to the Special Government Pleader, S.R.No.16416

W.P. No. 38939 of 2015
and
M.P. Nos. 1 & 2 of 2015

PM(CO)
RSI(21/05/2020)