IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.14117 of 2011
and
M.P.No.1 of 2011

M/s.Darani Cones,
Represented by its Partner,
C.Rajendran,
No.4, Duraisamy Street,
Veerappan Chatram,
Erode – 4. ...Petitioner

Vs

1.The Special Committee under Section 16-D of the Tamil Nadu General Sales Tax Act, 1959,
Office of the Special Commissioner and
Commissioner of Commercial Taxes,
Ezhilagam, Chennai – 600 005.

2.The Special Commissioner and Commissioner of Commercial Taxes, Ezhilagam,
Chepauk, Chennai – 600 005.

3.The Assistant Commissioner (Commercial Taxes),
Chithode Assessment Circle,
Chitode.

4.M/s.Salem Textiles Limited,
Selliampalayam,
Narashingapuram P.O.,
Attur. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the files of the 3rd respondent in Na.Ka.2699/01/A3/Va.Vi.3061222 dated 09.02.2011.

For Petitioner : Mr.R.Senniappan
For Respondents: Mr.V.Veluchamy
Govt. Advocate for R1 to R3
Mr.R.Parthiban for R4

ORDER

The writ on hand is filed challenging the attachment notice issued under Section 27 of the Act.

2. The petitioner states that he had submitted an application under Section 39 and 16-D of the Tamil Nadu General Sales Tax Act, 1959 seeking proposal for waiver on 30.09.2003 and further submitted a petition dated 15.06.2004 to the second respondent praying for direction to the third respondent for taking steps for collection of arrears from the fourth respondent, who owes money to the petitioner in the business transaction. In W.P.No.1405 of 2005, this Court passed an order dated 23.03.2009 granting opportunity to the third respondent in respect of the garnishee proceedings against the fourth respondent. The second respondent provided an opportunity to the writ petitioner to defend its case on 06.04.2011. The petitioner had given a statement and thereby requested the second respondent to take steps for collection of arrears from the fourth respondent as directed by the High Court in W.P.No.1405 of 2005. The fourth respondent further informed, if notice of arrears was received from the office of the Commercial Tax Department, he will make payment directly to the Department from the fourth respondent. Under these circumstances, the impugned notice was issued by the third respondent.

3. It is not in dispute that against the impugned notice the statute contemplates the revision, to be filed under Section 54 of the Act. Admittedly, the petitioner has not filed any such revision and has chosen to file the present writ petition exhausting the statutory remedy contemplated, which is of paramount importance. In view of the fact that the High Court cannot adjudicate the disputed facts with reference to the documents and evidences under Article 226 of the Constitution of India, the writ petitioner has to exhaust the revisional remedy provided under the Statute for adjudication of facts. The Revisional Authority is the fact finding authority, therefore, conduct an enquiry with reference to the original records.

4. This being the factum, the petitioner has to exhaust the remedy provided under the statute by filing the Revision Petition under Section 54 of the Act. The petitioner is at liberty to do so and in the event of filing any such revision, the Authority Competent is empowered to consider the same on merits and pass orders as expeditiously as possible, in accordance with law by affording opportunity to the writ petitioner.

5. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Special Committee under Section 16-D
of the Tamil Nadu General Sales Tax Act, 1959,
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2.The Special Commissioner and Commissioner
of Commercial Taxes, Ezhilagam,
Chepauk, Chennai - 600 005.

3.The Assistant Commissioner (Commercial Taxes),
Chithode Assessment Circle,
Chitode.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.34401
+1cc to Special Government Pleader(Taxes), S.R.No.34081, 32998

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and M.P.No.1 of 2011

GPL(CO)
CB(11/08/2021)