IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

CORAM:

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

WP NO.13947 OF 2013

AND

MP NO.1 OF 2013

M/s.Raajali Traders,
Rep. By its Proprietor V.Velmurughan,
No.10/4/1-B, Palaniappa Layout,
Sakthi Nagar, Mahadavapuram,
Mettupalayam – 641 305,
Coimbatore District. .. Petitioner

Vs

The Assistant Commissioner (CT) (FAC),
Mettupalayam Assessment Circle,
Karamadai Road,
Mettupalayam – 641 301,
Coimbatore District. .. Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the respondent in TIN No.33222042645/2010-2011 dated 05.02.2013 which was served on the petitioner on 08.04.2013 and quash the same as illegal, arbitrary, without jurisdiction and without authority of law.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.V.Veluchamy
Government Advocate.

O R D E R

The notice dated 05.02.2013 issued under Tamil Nadu Value Added Tax Act, 2006 by the respondent, is under challenge in the present writ petition.

2. The petitioner is a whole sale and retail dealer in Tea, beverages and Herbal Sherbet granules and a registered dealer

under the provisions of the TNVAT Act. The petitioner states that they are doing business for several years. For the assessment year, 2010-11, the petitioner has filed their return.

3. The respondent issued a notice stating that the business place of the petitioner was inspected on 21.01.2010 by the Enforcement Wing officials of the respondent department and unearthed certain details regarding sales suppression due to stock verification etc. Based on the inspection conducted by the Enforcement Wing officials, a notice was issued to the petitioner to submit the explanation within 15 days. Instead of filing their objections, the petitioner has chosen to file the writ petition on the ground that the very issuance of the notice is based on incorrect set of facts.

4. The learned counsel for the petitioner also made an attempt to defend the petitioner that the impugned notice is passed on certain factual details, which cannot be adjudicated by this Court in a writ petition under Article 226 of the Constitution of India.

5. No writ against a show cause notice needs to be entertained in a routine manner. A writ against a show cause notice may be entertained only on exceptional circumstances where the impugned notice is issued by an incompetent authority having no jurisdiction under the provisions of the Act or allegation of mala fides are raised against any such authority. Even in such cases, where allegation of mala fide is raised, the authority against whom such allegation is raised must be impleaded as a party, in the writ petition in his personal capacity. In the absence of any one of these grounds, the writ petition against a show cause notice, is not maintainable.

6. A person on receipt of the notice at the first instance has to respond to the notice by submitting their reply and only if any final orders are passed, thereafter, the aggrieved person may prefer an appeal under the provisions as contemplated under the Act. This being the procedures to be followed, High Court cannot adjudicate certain factual aspects in a writ proceedings more specifically when the notice in present case was passed on the inspection conducted by the Enforcement Wing officials of the Commercial Tax Department and during such inspection, the Enforcement Wing unearthed certain facts which are all to be adjudicated with the original documents and evidences made available.

7. This being the factum established, the petitioner is at liberty to respond to the notice within a period of two weeks from the date of receipt of a copy of this order and if any such

objections are raised from the petitioner, the same should be considered and the respondent shall proceed with the notice and pass orders on merits and in accordance with law and shall continue all further proceedings by following the procedures as contemplated.

8. With the above observations, the writ petition stands dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

s/d
Assistant Registrar(CS IV)

True Copy

Sub-Assistant Registrar

ars

To

The Assistant Commissioner (CT) (FAC),
Mettupalayam Assessment Circle,
Karamadai Road,
Mettupalayam – 641 301,
Coimbatore District.

+1cc to M/S.K.Soundararajan, Advocate, SR.No.40922
+1cc to Special Government Pleader(Taxes), SR.No.41442

WP No.13947 of 2013

KSM(CO)
PM(07/09/2021)