IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.11679 OF 2014

S.Meenakshi Sudaram ... Petitioner

Vs.

Assistant Commissioner (CT)
Vadapalani II Assessment Circle,
Chennai. ... Respondent

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondent not to proceed against the petitioner for the dues of the firm by name and style “Aruppukotai Chattinadu A/C Restaurant” after the date of the petitioner retirement i.e., 19.11.2020 and to refund the amount of Rs.1,10,491/- (Rupees One Lakh and Ten Thousand and Four Hundred and Ninety One only), wrongly collected from the petitioner, considering the claim made by the petitioner in letter dated 11.03.2014.

For Petitioner : Mr.T.V.Lakshmanan

For Respondent : Mr.V.Veluchamy
Government Advocate

ORDER

The relief sought for in the present writ petition is to direct the respondent not to proceed against the petitioner for the dues of the firm by name and style '"Aruppukkotai Chattinadu A/C Restaurant", after the date of the petitioner's retirement i.e., 19.11.2010, and to refund the amount of Rs.1,10,491/- wrongly collected from the petitioner.

2. The petitioner states that he was a partner in the partnership firm by name and style "Aruppukkotai Chattinadu A/C Restaurant". The firm is an assessee on the files of the

respondent. However, the petitioner states that he retired from the partnership firm on 19.11.2010. While so, the respondent issued notice on 25.10.2013, demanding arrears of tax for the years 2011-2012 and 2012-2013.

3. The petitioner, in his letter dated 07.11.2013, informed to the respondent that he had retired from the partnership firm with effect from 19.11.2010 and therefore, in respect of the dues falling subsequently, the petitioner cannot be held liable.

4. In support of this contention, the learned counsel for the petitioner relied on the Judgment of the High Court of Madras in the case of P.Abimanyu and another Vs T.K.Suriay Prakash and others passed in W.P.No.20771 of 1999. However, in the said case, the assessee approached the Civil Court and sought for a declaration and thereafter, the Additional District Munsif, Srivilliputhur delivered the Judgment on 28.08.1997. Subsequently a fresh demand was raised against the petitioner. The petitioner had challenged the same before the Special Tribunal and the Special Tribunal rejected the petition and thereafter, the petitioner approached the High Court. However, in the present case, the petitioner has not challenged any such order. Contrarily, a negative relief sought for in the present writ petition restraining the respondent from proceeding against the petitioner, cannot be granted and in the event of granting any such relief, the same would cause prejudice to the Revenue's procedures and process contemplated under the Act, which are to be availed by the parties.

5. Thus, a blanket injunction restraining the respondent from initiating action against the petitioner under the Act cannot be granted. If at all the petitioner is aggrieved, adjudication of facts are required for the purpose of forming an opinion.

6. In the present case, the retirement of the petitioner from the partnership firm is to be established with documents and which is to be legally accepted with reference to the Partnership Act. All these factors require an elaborate adjudication with reference to the original documents and evidences. High Court cannot adjudicate those disputed facts and therefore, it is for the petitioner to approach the competent authority for the purpose of adjudication of these factors for redressing his grievance.

7. With the above liberty, this Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

hvk/arb

To

Assistant Commissioner (CT)
Vadapalani II Assessment Circle,
Chennai.

+1cc to the Special Government Pleader(T), S.R.No.37429

W.P.No.11679 of 2014

PMK(CO)
CS/19/08/2021