BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.03.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD)No.5647 of 2022
and
W.M.P.(MD)Nos.4541 & 4544 of 2022

M/s.Ashwin Exim India Pvt. Ltd.,
Rep. by its Managing Director,
Mr.A.Viswanathan,
S/o.Alwarsamy,
No.111/N, State Bank Colony,
Nataraja Nagar,
Polpettai,
Tuticorin, Tuticorin District. .. Petitioner

Versus

M/s.Tuticorin City Municipal Corporation,
Rep. by its Commissioner,
Tuticorin,
Tuticorin District. .. Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned special notice, dated 03.03.2022, in Na.Ka.No.A1/141/2020 May, 6 with attachments with regard to Door No.2/65, 2/65A, 2/65B and 2/65C of Madathur Byepass Road, Tuticorin, Tuticorin District, issued by the respondent, quash the same and thereby direct the respondent to make a fresh assessment over the property bearing Door Nos.2/65, 2/65A, 2/65B and 2/65C of Madathur Byepass Road, Tuticorin, Tuticorin District, as per the Rules, within a time frame as may be fixed by this Court.

For Petitioner : Mr.B.Rajesh Saravanan
For Respondent : Mr.S.Shaji Bino
Standing Counsel

ORDER

Mr.S.Shaji Bino, learned Standing Counsel takes notice for the respondent. By consent, this Writ Petition is taken up for final disposal at the admission stage itself.

2.The petitioner has challenged the impugned demand notice dated 03.03.2022, seeking to demand a sum of Rs.3,70,405/-, being the property tax for the second half of 2021-2022.

3.It is the case of the petitioner that the property belongs to them and they are occupying the same and therefore, the assessment of the property as a commercial property cannot be justified.

4.It is submitted that at best the property is liable to be assessed as an industrial property and therefore, the tax could be demanded by the respondent would be lesser. That apart, it is submitted that the respondent has demanded tax under the provisions of the Chennai City Municipal Corporation Act, 1919, though the property is liable to tax under the provisions of the Coimbatore City Municipal Corporation Act, 1981. It is submitted that the demand is also unsustainable as before inspecting the property, no notice was given to the petitioner.

5.The learned Standing Counsel for the respondent – Tuticorin City Municipal Corporation submits that the petitioner had given an undertaking before the authorities to abide by the decision when it was pointed out that the construction was put up without obtaining proper licence. The learned Standing Counsel submits that in any event, the petitioner has an alternate remedy in terms of Rule 20 in Part – V of Schedule – II of the Coimbatore City Municipal Corporation Act, 1981, by way of appeal before the Taxation Appeal Tribunal and therefore, the petitioner should be asked to work out his remedy before the Taxation Appeal Tribunal.

6.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

7.The learned counsel for the petitioner submits that the property is under seal. There is no justification in keeping the property under seal as admittedly, the petitioner is in occupation and is carrying on business from the said premises. However, the petitioner cannot evade tax or not pay the tax merely because it is their case that the property would be subjected to lesser tax as an industrial use. The petitioner is required to establish their rights before the Taxation Appeal Tribunal in terms of Rule 20 in Part – V of Schedule – II of the Coimbatore City Municipal Corporation Act, 1981.

8.Therefore, the petitioner is directed to pay the disputed tax immediately. On payment of such amount, the property shall be de-sealed immediately for the petitioner to carry on business from the said premises. The petitioner is given liberty to file an appropriate appeal before the authority namely, Taxation Appeal Tribunal within a period of 30 days from the date of receipt of a copy of this order, in which case, the amount to be paid by the petitioner pursuant to this order will be appropriated subject to the final outcome of the said appeal.

9.This Writ Petition stands disposed with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Commissioner,
Tuticorin City Municipal Corporation,
Tuticorin,
Tuticorin District.

+1 CC to M/s.S.SAJI BINO, Advocate (SR-15185[F] dated 29/03/2022)

+1 CC to M/s.B.RAJESH SARAVANAN, Advocate (SR-15265[F] dated 30/03/2022)

WP (MD) No.5647 of 2022
29.03.2022

SRK(CO)
KB(07.04.2022) 3P 4C