IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.3375 of 2023 and
W.M.P. No.3442 of 2023

M/s.Sangeetha Enterprises,
represented by its Partner
Mrs.Sangeetha Sharma ... Petitioner

vs.

The Assistant Commissioner (ST),
Peelamedu North Circle,
Coimbatore. ... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent to furnish xerox copies of the records recovered in Form VSI – 5 (Inventory of records recovered) dated 29.03.2010 before proceeding further.

For petitioner	:	Mr.N.Inbarajan
For respondent	:	Mr.V.Prasanth Kiran, Government Advocate

ORDER

By consent of both the parties, this writ petition has been taken up for final disposal at the admission stage itself.

2.This writ petition has been filed for a Mandamus seeking for a direction to the respondent to furnish xerox copies of the records recovered in Form VSI -5 (Inventory of records etc. recovered) dated 29.03.2010 before proceeding further.

3.Earlier, the petitioner had filed a writ petition seeking for the aforementioned records in W.P. No.29142 of 2015. By order dated 25.09.2015, this Court had set aside the impugned assessment order dated 31.07.2015 and directed the respondent to furnish xerox copies of the seized documents within a period of two weeks from the date of receipt of a copy of the said order to enable the petitioner to file their objections to the notice already issued and on receipt of those xerox copies of documents, the petitioner was directed to file necessary objections, within a period of two weeks thereafter. After filing objections, the respondent was directed to pass appropriate orders, on merits and in accordance with law, within a period of six weeks thereafter, after affording an opportunity of hearing to the petitioner.

4.The grievance of the petitioner in this writ petition is that till date, the documents directed to be furnished to the petitioner under the aforementioned order dated 25.09.2015 passed by this Court in W.P. No.29142 of 2015 has not been given to the petitioner. According to the petitioner, based on the quashed assessment order dated 31.07.2015, the respondents are taking coercive steps to recover the tax and penalty from the petitioner.

5.Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mr.V.Prasanth Kiran, learned Government Advocate, who accepts notice on behalf of the respondent.

6.This Court directed the learned Government Advocate appearing for the respondent to get instructions as to whether any fresh assessment order has been passed subsequent to the passing of the order dated 25.09.2015 in W.P. No.29142 of 2015. The concerned officer is present in Court. The learned Government Advocate appearing for the respondent sought instructions from him and informed this Court that a fresh assessment order has not been passed in terms of directions issued by this Court on 25.09.2015 in W.P. No.29142 of 2015. Therefore, the question of recovering the tax and penalty amount from the petitioner without passing any assessment order will not arise. Only when an assessment order has been passed, amount mentioned in the said assessment order can be recovered from the petitioner.

7.It is also submitted by the learned Government Advocate appearing for the respondent that despite several attempts made by the respondent to furnish the copies of the records recovered in Form VSI -5 from the petitioner, they have been unable to do so since the petitioner has not come forward to collect the same from the respondent as per the notice issued to them.

8.Learned counsel for the petitioner would now submit on instructions that the petitioner is willing to collect the documents on a particular date fixed by this Court from the respondent. The said undertaking given by the petitioner is recorded.

9.For the foregoing reasons, this writ petition is disposed of by directing the petitioner to collect the xerox copies of the records recovered from them in Form VSI -5 (Inventory of records etc. recovered) dated 29.03.2010 from the office of the respondent on 16.02.2023 at 10.30 a.m. without fail and the respondent shall hand over the same to the petitioner on that day. However, it is made clear that the respondent shall recover the tax and penalty amount from the petitioner in respect of the assessment year 2009-10, only after giving sufficient opportunity to the petitioner to contest the proceedings and by adhering to the principles of natural justice, by granting the petitioner the right of personal hearing. Consequently, connected W.M.P. stands closed. No costs.

07.02.2023

vga
Index: Yes/No

To

The Assistant Commissioner (ST),
Peelamedu North Circle,
Coimbatore.

ABDUL QUDDHOSE, J.

vga

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