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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26783 of 2023
and
W.M.P.No.26218 of 2023

Tvl.Sathiya Agencies,
Represented by its Proprietor Mr.Sathiyanarayanan,
No.7, Ranagan Street,
Avaraipakkam, Tindivanam - 604 001.
Villupuram District.
... Petitioner

Vs.

The State Tax Officer,
Tindivanam Assessment Circle,
Tindivanam. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent recovery proceedings in TIN [Va.Vi] No.33374722430/2014-2015 & 2015-2016 dated 08.08.2023 and the quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

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For Petitioner : Mr.D.Vijayakumar

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

ORDER

Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate takes notice for respondent.

2. The petitioner has challenged the impugned Recovery Notice dated 08.08.2023.

3. By the impugned Recovery Notice, the petitioner has been asked to respond to a Show Cause Notice dated 22.06.2023 and also furnish the documents within a period of thirty days, that were called for in the aforesaid notice, failing which, the petitioner to pay the tax for a sum of Rs.12,21,575/-.

4. It is noticed that petitioner had earlier suffered Assessment Orders dated 19.08.2016 and 06.10.2016 for the respective Assessment Years namely 2014-2015 and 2015-2016. They were subject matter of challenge before this Court in W.P.Nos.602 and 603 of 2017. By two separate orders

both dated 09.01.2017, the respective Assessment Orders for the respective Assessment Years were quashed.

5. Operative Portion of the respective orders of this Court in W.P.Nos.602 and 603 of 2017 identically reads as follows:

> ***"6.1 The respondent will issue a fresh notice to the petitioner, if found necessary, for imposing tax. The requisite material, based on which, the allegation of suppression of sales is levelled, will be supplied to the petitioner. The petitioner will be given a liberty thereafter, to file his objections. The respondent, will hear the petitioner and thereafter, pass a speaking order.***
>
> ***6.2. Needless to say that, if, the order passed is against the interest of the petitioner, he shall have the liberty to challenge the same, albeit, in accordance with law.***
>
> ***7. The Writ Petition is disposed in the aforementioned terms. Consequently, the connected Miscellaneous Petition stands closed. However, there shall be no order as to costs."***

6. Pursuant to the above, the petitioner has been issued with a Show Cause Notice dated 22.06.2023 to which, the petitioner has replied on 02.08.2023 and had sought for time for 30 days to respond, however, the petitioner failed to respond to the same and therefore, the impugned Recovery

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Notice has been issued on 08.08.2023. *Post facto*, after giving reply on 02.08.2023, the petitioner had filed this writ petition on 31.08.2023 challenging the impugned Recovery Notice.

7. The question of initiating any recovery proceedings against the petitioner without passing an order cannot be countenanced.

8. The petitioner is directed to file all the required documents that has been called for in the Show Cause Notice dated 22.06.2023 and appear before the respondent for personal hearing on 25.09.2023. After considering the petitioner's representation dated 12.08.2023, the respondent shall pass final orders for the respective Assessment Years within a period of 30 days thereafter.

9. In case the petitioner fails to furnish the documents called for in the Show Cause Notice dated 22.06.2023, the respondent is at liberty to pass orders on merits and in accordance with law.

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10. At this stage, the learned Government Advocate for the respondent informed that the copy of representation dated 12.08.2023 is not available in the records. The petitioner is directed to furnish the same.

11. While passing orders, the respondent shall keep in mind the decision of this Court in W.P.Nos.602 and 603 of 2017 dated 09.01.2017 wherein, under a somewhat similar circumstances, the relief was granted to the petitioner.

12. This Writ Petition stands disposed of with the above observations. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

13.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

nsl/arb

C.SARAVANAN, J.

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To

The State Tax Officer,
Tindivanam Assessment Circle,
Tindivanam.

W.P.No.26783 of 2023
and
W.M.P.No.26218 of 2023

13.09.2023