IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.07.2017

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The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.31247 of 2004
and
W.P.M.P.No.37860 of 2004

Tvl. Madasamy Nadar Traders,
Rep.by its Properietor ...Petitioner

Vs.

The Commercial Tax Officer,
Mayiladuthurai - I Assessment Circle,
Mayiladuthurai. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the respondent and quash the same in its proceedings in CST.No.221434/2001-2002 dated 09.09.2004.

For Petitioner : Mr.T.V.Ganesh
for Mr.S.Gopinathan

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.T.V.Ganesh, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2. The petitioner is aggrieved by an order of assessment under the Central Sales Tax Act (CST) dated 09.09.2004 for the Assessment Year 2001-02. The petitioner's place of business was inspected on 04.07.2001 by the team of Enforcement Wing officials and the details of sales made for the relevant period was obtained. As per the information, the petitioner was transporting goods to the fictitious dealers at Chennai and after arriving at Chennai, they raised another bill and booked it in the Container Yard Thondiarpet, Chennai, for transporting to other state dealers, thereby evaded the payment of CST Tax.

Therefore, necessary verification was done in M/s.Venkateswara Traders on 17.07.2001, which revealed that the Chennai dealer has denied the purchases effected from the petitioner. Further, they have stated that they have not effected any interstate sales for the year 2001-2002 and the purchases are not at all related to their business.

3. Further, on investigation, particulars from the Container Corporation of India, Thondiarpet, Chennai was gathered in connection with the goods moved to other states for petitioner themselves. On verification of the details, it revealed that the same lorry moved from Thiruvarur to the Container Corporation of India, which would evidently prove that the petitioner has suppressed payment of tax under CST and after gathering the details of entries in the registers maintained by the authorities of Container Corporation of India, notice was issued to the petitioner for revision of the assessment.

4. The petitioner objected to the proposed revision on several grounds and stated that they have made sales within the state and there is no interstate sales. For this purpose, they requested for cross-examination of all parties, who denied the purchases. The Assessing Officer issued notice to those parties, namely, six dealers and invariably, all the notices were returned with an endorsement door locked, not available or no such address. Taking into consideration all the factors, the respondent completed the assessment and levied tax and penalty.

5. The learned counsel for the petitioner would submit that merely because there are entries in the records of the Container Corporation of India, that by itself cannot be a conclusive proof to show that the goods are outside the State of Tamil Nadu. The petitioner has given the letters of all the dealers stating that they have effecting purchases from this petitioner. All the contentions raised by the petitioner in this writ petition are factual contentions, which cannot be adjudicated in a writ petition. Though, the petitioner would contend that merely because of certain entries in the Container Corporation Limited registers, will not be a conclusive proof to show that there was an interstate sale.



6. It prima facie appears that the petitioner was unable to give satisfactory explanation, as to why the very same lorry was used to transport the goods to the Container Corporation Limited. That apart, notices were sent to those six dealers, were returned with an endorsement, no such address or always door locked. Thus, the petitioner has to establish his innocence by producing the details by gathering the same from the other authorities including Container Corporation of India and then,

defend his case. This obviously cannot be done in a writ petition. This Court is conscious of the fact that this writ petition is pending from 2004 onwards. Nevertheless, when the matter being fully factual, the petitioner has to necessarily file an appeal before the appellate authority.

7. For all the above reasons, the Writ Petition stands dismissed as not maintainable and the petitioner is granted 30 days time to file an appeal before the appellate authority from the date of receipt of a copy of this order and if the same is filed, the appellate authority is directed to consider the same without reference to limitation. Till then, the respondent shall not initiate any coercive action against the petitioner, as the petitioner had the benefit of stay in this writ petition. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Mayiladuthurai - I Assessment Circle,
Mayiladuthurai.

+ 1 cc to Spl. Government Pleader Sr.54841
+ 1 cc to Mr.K. Elango, ADvocate Sr.54247

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SSI(CO)
EU 31.08.17