IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.07.2017

Coram

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

Writ Petition Nos. 42574 and 42575 of 2016
and
W.M.P.Nos.36509 and 36510 of 2016

M/s.S.R.S.Traders
rep. by its Proprietor,
Mr.M.P.Ganesan ...Petitioner in both W.Ps.

Vs.

1. The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Chennai.

2. The Deputy Director of Income Tax,
(Investigation)
Chennai. ...Respondents in both W.Ps

Prayer in both W.Ps.

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the first respondent in his proceedings in TIN No/33721024549/2010-11 and 2011-12, and to quash the impugned proceedings, dated 21.11.2016 issued therein and further, to direct the first respondent to conduct necessary enquiry as sought for in the petitioner's application, dated 24.10.2016, filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006.

In both W.Ps.

For Petitioner : Mr.P.Rajkumar

For Respondent-1 : Mr.K.Venkatesh
Government Advocate

For Respondent-2 : Mr.A.P.Srinivas,
Senior Standing Counsel
and
Mr.A.N.Jeyaprathap
Standing Counsel

COMMON O R D E R

Heard Mr.P.Rajkumar, the learned counsel appearing for the petitioner, Mr.K.Venkatesh, the learned Government Advocate for the first respondent, and Mr.A.P.Srinivas, learned Senior Standing Counsel for the second respondent. With the consent of either side, the Writ Petitions are taken up for final disposal.

2. The petitioner, in these Writ Petitions, is before this Court, challenging the orders passed by the first respondent, Assessing Officer of the petitioner, dated 21.11.2016, by which, the petitioner's applications, under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, (henceforth, referred to as 'TNVAT Act) have been rejected.

3. The facts of the present case are very peculiar.

i) The petitioner is a registered dealer on the file of the first respondent, under the provisions of TNVAT Act. Having obtained such registration in the year, 2006, the petitioner is stated to be a dealer in stationery items and cell phone accessories, and claims that, they are small time dealer. The Audit Authorities of the respondent/Department appeared to have issued 2 audit slips during November, 2012 and July 2013, informing the first respondent/Assessing Officer that high value transactions have been effected by the petitioner, as the petitioner's TIN Number and PAN number have been mentioned with regard to those transactions, which were imports of high value items, including mobile phones. In the audit slips, a direction has been issued to the first respondent/Assessing Officer to take necessary action on such information received from the Customs Department.

ii) Based on the direction issued in the audit slips, notices were issued to the petitioner, alleging that they have not filed monthly returns and not reported the transactions, which were reflected in the audit slips. The petitioner did not submit their objection, resulting in assessment being completed ex parte for both the assessment years 2010-11 and 2011-12.

iii) According to the petitioner, they are small time dealer, and it is the misuse of the name of their Concern, TIN number and PAN number, and they have not effected any such high transactions, as alleged in the audit slips. Therefore, the petitioner sought for information under the Right to Information Act (RTI), and all that was furnished by RTI, were copies of the audit slips, dated 26.11.2012 and 10.07.2013, and apart from that, the respondent/Assessing Officer did not have any material to ultimately come to the conclusion that the petitioner had transacted business as mentioned in those audit slips. After securing such information, which, according to the petitioner, was insufficient and inadequate to make assessment on the petitioner, the petitioner approached the Income Tax Authorities, Customs Authorities, one of the Bank, where, the transaction was said to have taken place, and it appears that the statement has also been recorded from the petitioner by the Income Tax Department, and with all these facts, submitted applications under Section 84 of the TNVAT Act before the first respondent/Assessing Officer seeking rectification of the assessment orders.

iv) It was pointed out in the Petitions that, except, for the audit report, there is no other incriminating evidence, supporting the allegation against the petitioner. No enquiry has been conducted by the Commercial Tax Department, and the audit report does not reveal anything, except, stating that, high value exports have been effected in the name of the petitioner Concern, which fact has been disputed in the enquiry conducted by the Deputy Director of Income Tax Department. Further, the petitioner makes it clear that the name of their Concern, TIN number and PAN number have been misused by some other third party to effect huge import purchases, and the enquiry conducted by the Deputy Director of Income Tax Department (Investigation), in relation to the said imports revealed that the petitioner has not involved in huge transactions, in any manner. Therefore, requested the first respondent to conduct necessary enquiries with the Customs Department, Income Tax Department and three Banks, i) Kotak Mahindra Bank, Mylapore, ii) Standard Chartered Bank, Rajaji Salai, and iii) DCB Bank, Broadway, in which, the accounts have been opened in the name of the petitioner Concern with petitioner's TIN number and PAN number.

v) The first respondent, by the impugned orders, has rejected the Petitions under Section 84 of the TNVAT Act, stating that the request to conduct enquiry with the Customs Department, Income Tax Department and the Banks, cannot be accepted, as the Authority has no jurisdiction to do so, while exercising power under Section 84 of TNVAT Act.

4. After hearing the learned counsel for the parties and perusing the materials on record, including the elaborate counter affidavit filed by the first respondent, it is seen that the materials available with the respondent/Department to issue show cause notice for the assessment year 2010-11, dated 21.03.2013, is the audit slip, dated 26.11.2012. Similarly, the materials available for issuance of show cause notice for the

assessment year 2011-12, dated 24.12.2013, is the audit slip, dated 10.07.2013. When the petitioner's case is that, they have not carried out any such business involving huge transactions, and he has approached the Customs Department, Income Tax Department and the Banks, where, transactions have been effected and statement appeared to have recorded from the petitioner, and according to the petitioner, no other incriminating evidence has been detected by the Audit Officials against the petitioner, the first respondent/Assessing Officer, should have endeavoured to secure some facts from the Customs Department, Income Tax Department and the aforesaid three Banks. Till date, none of these Authorities have initiated any action in respect of the huge transactions, having effected in the Bank accounts standing in the name of the petitioner. Therefore, it may be true that the audit could give a cause to commence the proceedings, but before issuing a show cause notice to the dealer, the Assessing Officer should have sufficient material to connect the petitioner to that of the transactions, especially, in the light of the stand taken by the petitioner in the Petitions for rectification.

5. Therefore, this Court is of the view that, a detailed enquiry is required to be done, and if necessary, the first respondent/Assessing can seek for appropriate orders from the Higher Officers, so that, the Assessing Officer can address the Customs Department, Income Tax Department and the aforementioned three Banks, and then, to proceed with the matter, if this procedure is not followed, it would be a case, where, without specifying that there were verifiable material connecting the petitioner with the transactions, proceedings would deemed to have commenced.

6. Thus, as already stated above, the case on hand is being a very peculiar case, this Court is inclined to mould the relief, sought for by the petitioner. Accordingly, both the Writ Petitions are allowed, and the impugned orders, dated 21.11.2016 are set aside. Consequently, the ex parte assessment orders, dated 21.03.2013 and ***29.06.2015** are also set aside and the matters are remanded to the first respondent at the stage of the show cause notices. The first respondent is directed to ask necessary enquiries with the Customs Department, Income Tax Department and the Banks, viz., Kotak Mahindra Bank, Mylapore, Standard Chartered Bank, Rajaji Salai and DCB Bank, Broadway, where, transactions have been effected, and after receipt of the requisite information, the first respondent is directed to issue fresh show cause notice to the petitioner, and thereafter proceed with the matter in accordance with law. Considering the peculiar facts and circumstances, the second respondent is

directed to disclose the information secured by them as and when a request is made by the first respondent. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS VI)
Dated: 20.07.2017

*Corrected as per order
of this Court dated 08.08.2017.
sd/- Assistant Registrar(CS VI)
Dated: 30.08.2017.

/true copy/

Sub Asst. Registrar

To

1. The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Chennai.

2. The Deputy Director of Income Tax,
(Investigation)
Chennai.

To be substituted to the order already despatched on 03.08.2017.

+ 1 cc to M/s.P.Rajkumar, Advocate,SR.56951

+ 1 cc to M/s.A.P.Srinivas, Advocate,SR.57868

Writ Petition Nos. 42574
and 42575 of 2016

EV(CO)
NR 24/07/2017
SP(30/08/2017)