IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.13680 of 2016 and
WMP.Nos.11968 and 11969 of 2016

Gurumoorthy ... Petitioner

Vs

1.The Assistant Commissioner,
Commercial Taxes Department,
Villupuram II, Villupuram.

2. The Commercial Tax Officer,
Enforcement Circle II,
Villupuram. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in order dated 27.4.2015 in Na.Ka.A3/353/2014 and the consequential Order dated 18.01.2016 in Na.Ka.A3/353/2014 both orders on the file of the 1st respondent and quash the same.

For Petitioner : Mr.G.Rajan

For Respondents : Mr.V.Haribabu,
A.G.P. (Taxes)

O R D E R

This Writ Petition has been directed against the impugned order of the 1st respondent dated 27.4.2015 calling upon Mr.G.Ganesan, the petitioner's father, who is the Proprietor of Guru Timber Depot at No.795, Pandit Jawaharlal Nehruji Road, Villupuram, to pay the arrears of tax of Rs.1,20,89,484/-.

2. The learned Counsel appearing for the petitioner submitted that the 2nd respondent has issued a Show Cause Notice to his father on 29.2.2012 in VSL.3A.3/2011-12 alleging that due to sales suppressions and probable omissions, there was a total suppression of turnover for the year 2010-2011 which comes to Rs.1,21,51,308/- and the total tax involved for the year 2010-

2011 has been arrived at Rs.15,18,913/-. On this basis, the petitioner's father was called upon to give his explanation within a period of 15 days from the date of receipt of the notice. As against the Show Cause Notice, the petitioner's father has also taken appropriate steps challenging the same in accordance with law. Finally, the respondents have passed a distraint order attaching the property settled upon the petitioner who is the son of Ganesan on 29.10.2010. But, according to the petitioner, since the property-in-question has been settled in favour of the petitioner under Settlement Deed dated 29.10.2010 by virtue of Section 43 of the Tamil Nadu Value Added Tax Act, 2000, the respondents cannot proceed against the property. He has also further submitted that no notice whatsoever has been given to the petitioner before passing the impugned order.

3. A detailed counter affidavit has been filed by the respondents.

4. The learned Additional Government Pleader appearing for the respondents submitted that as the place of business in question was inspected by Enforcement Wing Officers on 21.4.2010 to find out the genuineness of the business carried over by Mr.Ganesan. Certain records were also seized and recovered on issuance of D7 Slip and a statement was also recorded from the Proprietor. It has also been admitted by the Proprietor that he did not maintain any books of accounts for years together and also not filed the monthly tax returns for 3 years. It was also ascertained by the Inspecting Officials that no books of accounts were maintained in the business premises. Anyhow, for the purpose of ascertaining the actual position of the sales made by Mr.Ganesan from 1.1.2007, the petitioner's father Mr.Ganesan was given an ample opportunity to produce the books of accounts on the following dates:

Date of Issue of Sealed Summons/Notice	Date of Hearing
22.4.2010	10.05.2010
18.06.2010	07.07.2010
07.10.2010	25.10.2010

But the petitioner's father neither turned up nor produced any books of accounts. As a result, the matter was referred to the respondents and subsequently, Sealed Summons in Form PP and notices were issued to the petitioner's father on the following dates by the respondents.

Date of Summon	Date of Hearing
25.2.2013	7.3.2013
Date of Notice	Period Allowed
28.6.2013	15 days

5. Again the dealer, namely, the petitioner's father Ganesan did not even respond to the same for the reason, best known to him. Thereafter, on 22.8.2013, the dealer Mr.Ganesan was assessed for the best of judgment under Section 22(4) and 22 (5) of the Tamil Nadu Value Added Tax for the years 2006-07, 2007-08, 2008-09 and 2009-10. In the meanwhile, the dealer Ganesan, being afraid of the seriousness and consequences, expecting huge amount of demand by the respondents, with an intention to defraud the revenue, transferred the immovable property that was self-acquired by him in favour of his elder son Gurumoorthy, by a Settlement Deed dated 29.10.2010. Therefore, the said transfer was made with an intention to defraud the revenue is void under Section 43 of the Tamil Nadu Value Added Tax Act, 2006. Therefore, the Writ Petition is liable to be dismissed.

6. In this context, it is pertinent to extract Section 43 of the Tamil Nadu Value Added Tax Act, 2006 hereunder :

> ''Where during pendency of any proceedings under this Act or after the completion thereof, any dealer creates, a charge on, or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceedings or otherwise.''

7. A careful perusal of the above section coupled with the facts of this case makes it clear that when the petitioner's father, who was a dealer, was issued with three summons on 22.4.2010, 18.6.2010 and 7.10.2010 fixing the dates of hearing on 10.5.2010, 7.7.2010 and 25.10.2010 respectively, the petitioner's father did not bather to appear and produce the books of accounts. Therefore, again sealed summons were issued for four years i.e. 2006-07, 2007-08, 2008-09 and 2009-10. Again the petitioner's father did not bather to appear and produce books of accounts before the respondents. But, in the meanwhile, he has executed a Registered Settlement Deed in favour of his elder son Gurumoorthy, the petitioner herein, only for the purpose of defrauding the revenue. Therefore, this

Court is of the view that Section 43 of the Tamil Nadu Value Added Tax Act, 2006, would squarely apply to the case of the petitioner. Besides, Mr.Ganesan did not question the impugned order, hence, the petitioner has no locus standi to maintain this petition.

8. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner,
Commercial Taxes Department,
Villupuram II, Villupuram.

2. The Commercial Tax Officer,
Enforcement Circle II,
Villupuram.

+1 cc to Mr.G.Rajan, Advocate Sr.No.81611
+1 cc to The Special Government Pleader, Sr.No.81952

W.P.No.13680 of 2016

VGII(CO)
CSL/11.01.2019