IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12949 of 2017
and
WMP No.13815 of 2017

K.K.Krishnamoorthy ... Petitioner

Vs.

1.The Additional Chief Secretary,
Commissioner of Commercial Taxes,
Chepauk, Chennai-600 005.

2.The Joint Commissioner (CT),
Trichy Division, Trichy.

3.The Assistant Commissioner (CT),
Ariyalur. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the entire records of the impugned orders issued by the third respondent in his proceedings in RC.No.411/2017 B4 (TIN 33443600053) dated 19.04.2017 and the consequential impugned order issued in his proceedings RC.No.411/2017 B4 (CST : 210009) dated 25.04.2017 and quash the same and consequently direct the third respondent to restore the status of partnership of Tvl.Kali Chettiyar and Sons from proprietorship as per the order of the first respondent dated 16.02.2017.

For Petitioner : Mr.T.Sellapandian

For Respondents : Mr.M.Hariharan,
Additional Government Pleader

O R D E R

The petitioner has filed this writ petition challenging a notice issued by the third respondent dated 19.04.2015. The allegation in the notice is that the petitioner's father Thiru.K.Kali Chettiar had registered himself as a dealer and as a proprietorship concern under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the TNGST Act") with effect from 06.06.1970 with registration No.118038.

2.It further states that Thiru.K.Kali Chettiar expired in December, 1991. In this connection, a complaint was received from the petitioner and an enquiry was conducted with the petitioner as well as his brothers and wives of two of the brothers, who have also been enquired and scrutiny of records had revealed that the proprietorship concern registered by Thiru.K.Kali Chettiar has been converted as a partnership concern without informing the Department in time.

3.The notice further states that the fact of demise of Thiru.K.Kali Chettiar was not reported to the Department and several changes were made in the constitution of business, which were also not reported to the Department. In this regard, reference was made to Section 20(2-A) of the TNGST Act and 38(4) of the Tamil Nadu Value Added Tax Act (hereinafter referred to as "the TNVAT Act"). Thus, the respondent stated that the registration certificate issued to the petitioner's father Thiru.K.Kali Chettiar ceased to be in force with effect from the date of his death, simultaneously admitting that it is in force till date because of the failure on the part of the successor(s) of the business. Therefore, the third respondent proposed to cancel the registration of Tvl.K.Kali Chettiar & Sons under the provisions of the TNVAT Act with immediate effect and the petitioner was granted fifteen days time to submit their objections in writing.

4.Learned counsel for the petitioner submitted that the impugned notice issued by the third respondent is contrary to the order passed by the first respondent dated 16.02.2017, as well as contrary to the letter dated 15.03.2017 of the third respondent.

5.It is further submitted that the registration certificate issued by the third respondent during the lifetime of the petitioner's father shows the name of the petitioner as one of the partners. Therefore, the provisions of Section 20 (2-A) of the TNGST Act would have no application, as, even during the lifetime of Thiru.K.Kali Chettiar, it has been registered as a partnership concern and not as a proprietorship concern.

6.Learned counsel for the petitioner further submitted that the petitioner had lodged a compliant against the then Assistant Commissioner, the Deputy Commercial Tax Officer, viz., Thiru.Saravanan Sataiappan and Thiru.P.Thiruvasagam, who have colluded with the petitioner's brother for personal gain fabricated documents, altered the records, as if the petitioner has given consent for removal of his name from the partnership firm for which the petitioner has lodged a complaint and the matter is in the process of enquiry and at that juncture, the impugned notice is purely a mala fide action with a view to thwart the enquiry.

7.Further, it is submitted that the petitioner's brothers viz., K.Selvaraj and K.K.Venkatesan have filed suit in O.S.No.150 of 2016 before the District Munsif Court, Perambalur for a permanent injunction and the Commercial Taxes Department being not a party to the suit, the pendency of the same has absolutely no relevance to the present proceedings. Therefore, on the above grounds, it is submitted that the impugned notice requires to be set aside.

8.Learned Additional Government Pleader seeks to sustain the impugned notice by contending that, it is only a notice and it is well open to the petitioner to submit his objections, which will be considered by the third respondent. Certain portions of the counter affidavit were referred to, to sustain the impugned notice.

9.Heard Mr.T.Sellapandiyan, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader for the respondents.

10.On-going through the counter affidavit filed by the Commercial Tax Officer, Ariyalur, I find that it is replete with contradictions presumably to confuse the whole issue for the reasons best known. Paragraph 7 at page 6 of the counter affidavit clearly admits that during the lifetime of the petitioner's father, application in Form D was filed on 19.02.1986, in which the details of the partners were furnished consisting of the petitioner's father Thiru.K.Kali Chettiar, his brothers K.Shanmugam and K.Selvaraj and the petitioner K.K.Krishnamoorthy.

11.Further, in the counter affidavit it is admitted that the Assistant Commissioner (Ariyalur) has attested the same. However, the third respondent seeks to take a stand that the Form D application was received without date and seal of the office of the third respondent and issued to the petitioner. If that is so, the petitioner cannot be blamed nor the other partners viz., K.Shanmugam, and K.Selvaraj. As long as the third respondent does not dispute the fact that the Form D application was filed by the petitioner's father Thiru.K.Kali Chettiar as early as on 19.02.1986, it has to be construed that the dealer was always a partnership firm and not a proprietorship as observed in the impugned notice. The third respondent in paragraph 8 of the counter affidavit at page 6 has admitted that the Additional Chief Secretary/Commissioner of Commercial Taxes vide letter dated 16.02.2017, has instructed the Joint Commissioner (CT), Trichy to direct the registering authority, Ariyalur Assessment Circle, to immediately take steps to restore the status of the partnership to Tvl.Kali Chettiar & Sons from proprietorship.

12.Though such a stand has been taken in paragraph 8 of the counter affidavit, the third respondent refers to an alleged application dated 18.01.2007, showing the name of three of the petitioner's brothers and two of their spouses omitting the name of the petitioner. It is not known as to why the third respondent did not obey the order passed by the Commissioner of Commercial Taxes. Whoever the officer in charge at that point of time is liable to be proceeded departmentally. It is not known as to whether the Department has taken action. But, however, since the Assistant Commissioner is a party to this writ petition, the Court directs the Assistant Commissioner to take appropriate action against the erring registering authority, who functioned at the relevant point of time, who disobeyed the direction issued by the Commissioner of Commercial Taxes dated 16.02.2017. It is not known as to how when an application in Form D submitted in 1986 was very much available in the records based on which the dealer was treated as a partnership concern consisting of four partners could have been ignored and fresh applications could have been accepted in the same name and a fresh TIN number was allotted. There is something more than what meets the eye and the petitioner is, therefore, well justified in naming the few officers alleging that they have colluded with his brothers. It is not known as to whether any departmental action was initiated against those officers, though the Commissioner in his letter addressed to the petitioner dated 03.02.2017 stated that enquiry is being conducted by the Joint Commissioner (CT), Trichy.

13.As mentioned above, the counter affidavit is full of contradictious and the third respondent feigns ignorance and states that she does not know that the proprietorship has been converted as a partnership when she herself admitted that Form D application was filed in February, 1986 giving names of four persons as partners including the petitioner's father. Therefore, the impugned notice is illegal, unenforceable and deserves to be set aside. The proceedings initiated by the Commercial Taxes Department especially in the light of the allegations of fraud and collusion made against the officers of the Department themselves can hardly have any impact on the civil proceedings in which the Department is not a party. In any event, whatever the decree, which the plaintiff may obtain against the petitioner, it has to be executed in the manner known to law and the pendency of the said suit is not an impediment for the respondent/Department to take appropriate action.

14.Thus, for the above reasons, this writ petition is allowed, the impugned notice is set aside and it is declared that the dealer shall be recognised as a partnership concern in terms of the Form D Application filed during February, 1986. Taking into consideration the directive issued by the Commissioner of Commercial Taxes, the third respondent is directed to restore the registration of Tvl.Kali Chettiar & Sons as a partnership concern in terms of the application in Form D submitted during February, 1986, when the petitioner's father was alive. The above direction shall be complied with by the third respondent within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

abr

To
1.The Additional Chief Secretary,
Commissioner of Commercial Taxes,
Chepauk, Chennai-600 005.

2.The Joint Commissioner (CT),
Trichy Division, Trichy.

3.The Assistant Commissioner (CT),
Ariyalur.

+1cc to Mr.T.Sellapandian, Advocate SR.No.5356

 W.P.No.12949 of 2017

GN(06/02/2018)