IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2019

CORAM

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P.No.40884 of 2015
and MP.No.1 of 2015

Tvl.Naalvar Traders
Rep by its Proprietor Mr.M.Ganesh
3/24, Tank Street,
Tindivanam, Tamil Nadu. ... Petitioner

vs.

1. The Commercial Tax Officer (Main)
Tindivanam.

2.The Commercial Tax Officer,
Enforcement - Team-IV,
Cuddalore. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying, for the issuance of Writ of Certiorari calling for the records relating to the impugned proceedings of the 1st respondent in TIN No.33104723888/2012-13 dated 15.10.2015 and quash the same and pass such further orders.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr.V.Haribabu, AGP (T)

ORDER

The petitioner has impugned the order passed by the first respondent on 15.09.2015 seeking to demand a sum of Rs.11,32,266/- as tax due from the petitioner.

2. The demand in the impugned proceedings notice dated 15.09.2015 was issued to the petitioner based on the information gathered from the web portals of the Chennai Customs. As per the information gathered there was an import of Red Palmolin Edible Grade in Bulk in the name of the petitioner was reflected for

the total assessable value of Rs.1,24,90,450/- and were subject to assessment in bill of entry No.8419498 dated 06.11.2012.

3. The petitioner was therefore called upon to furnish the documents and accounts. As the petitioner had not disclosed the same in the returns filed for its Tamil Nadu Branch @ Tindivanam was registered by the petitioner for carrying oil business.

4. The petitioner replied to the above notice stating that he was not engaged in any business activities from the date of registration on 25.01.2012 and he had not made any purchase or sale from 12.01.2012. As such, no accounts and books were maintained for purchase except for petty cash account.

5. By the impugned order, the respondent observed that VAT audit was conducted on 21.04.2014 and a statement was recorded by the enforcement wing officials and a copy of statement and other copy of inspection records were also handed over to the petitioner and the petitioner had not discharged the burden of proof to distance from the tax liability.

6. The petitioner has challenged the impugned order in the present writ petition.

7. Since, filing of the writ petition, the petitioner has obtained information under RTI Act from the customs department on 26.05.2016. The petitioner submits that the petitioners import-export code was processed by M/s.Saabari Logistics Private Ltd and the import in question were cleared in the name of the petitioner by the said M/s.Saabari Logistics Private Ltd. It is submitted that the said M/s.Saabari Logistics Private Ltd. had misused the petitioner's aforesaid IE code.

8. Meanwhile, the petitioner had also filed a criminal complaint before the Superintendent, Villupuram on 10.12.2015 and since no action was taken, the petitioner filed Criminal Original Petition in Crl.OP.No.10243 of 2018. By an order dated 28.03.2018, Crl.O.P.No.10243 of 2018 was allowed with the following direction to the Station House officer :-

> “1) If the information received by therespondent discloses commission of

cognizable offence, then, the same shall be forthwith registered.

2) If an information received does not disclose a cognizable offence, the respondent shall conduct a preliminary inquiry to ascertain whether cognizable offence is disclosed therein or not and such inquiry shall be completed within a period of fifteen days from the date of information.

3) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered, if not already registered or closed.

4) If the preliminary inquiry ends in closing the complaint, the disclosure report must be recorded along with the reasonings and a copy of the same shall be furnished to the complainant within one week.

5) All information relating to cognizable offence whether resulting in registration of FIR or leading an inquiry must be reflected in the general diary/station diary/daily diary of the respondent's police station."

9. The learned counsel for the petitioner sought to rely on the decisions of this Court reported in (2017) 99 VST 343 (Mad) in the case of JKM Graphics Solutions Pvt Ltd., v. Commercial Tax Officer, Vepery Assessment Circle, Chennai, rendered in the context of information regarding mismatch in the web portal maintained by the department and the scheme for resolving the same has been suggested by this Court. The learned counsel further submitted that the similar guidelines can be framed even in the case of import and misuse of IE Code also in the impugned order.

10. Mr.V.Haribabu, learned AGP (Tax) submitted that the burden of proof lies on the petitioner under Section 17(1) TNVAT Act to establish that the IE code of the petitioner was misused. The petitioner ought to have registered a FIR. Since the petitioner has not taken any steps barring filing of criminal complaint and Crl.OP.No.10243 of 2018, the impugned order passed by the first respondent was sustainable. He therefore, submits that the present writ petition is liable to be dismissed.

11. I have considered the arguments of the learned counsel for the petitioner and the learned Additional Government Pleader

(Tax) appearing for the respondents.

12. Whether the petitioner had allowed M/s.Saabari Logistics Private Limited to use the IE code or whether the IE code has been misused by M/s.Saabari Logistics Private Limited can be independently investigated by taking assistance of the customs department.

13. The TANVAT Act also gave ample powers to the authorities to summon documents and witnesses and to call for information from the other Departments under Sections 81 and 82 of the Act. Similar provisions are there in the newly enacted GST Acts.

14. The respondents are therefore directed to exercise their power under Section 81 and 82 of the TN VAT Act read with T.N. GST Act, 2017 and Central GST Act, 2017 and investigate and gather information as to whether there was indeed import by the petitioner himself or whether there was impersonation and misuse of IE Code of the petitioner as is being now projected. This exercise can be carried out by the respondents in the exercise of statutory powers vested with them.

15. Therefore, the impugned order is set aside and the case is remitted back for further investigation by the respondents and to pass a fresh order after completing investigation. The respondents shall endeavour to complete the investigation within a period of 12 months from the date of receipt of a copy of this order.

16. After the conclusion of the investigation, the petitioner shall be confronted with the evidence that emanate from the investigations. The petitioner may thereafter file a reply. The respondent shall thereafter pass a speaking order after giving an opportunity of personal hearing to the petitioner within a period of 15 months from the date of receipt of a copy of this order.

17. In the result, the impugned order dated 15.10.2015 of the 1st respondent in TIN No.33104723888/2012-13 is set aside and the case is remitted back to the 1st respondent to pass a fresh order after due investigation as indicated above.

18. Accordingly, the Writ Petition is disposed on the aforesaid terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsh/kkd

To

1.The Commercial Tax Officer (Main)
Tindivanam.

2.The Commercial Tax Officer,
Enforcement - Team-IV,
Cuddalore.

+1cc to Mr.R.Kubendiran, Advocate SR.105042
+1cc to Spl Government Pleader (Taxes) SR.105449

W.P.No.40884 of 2015
and MP.No.1 of 2015

RSV(CO)
CB(11/02/2020)