BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **17.07.2019**
CORAM:
THE HONOURABLE DR.JUSTICE ANITA SUMANTH
W.P.(MD)No.4703 of 2019
and
W.M.P.(MD)No.3754 and 3755 of 2019

S.Alagarsamy ... Petitioner

/Vs./

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai – 600 005.

2.The Commercial Tax Officer,
Thirupparankundram Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai, Madurai – 625 020. ... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN:33506231339/2007-08 dated 22.08.2014 and quash the same.

For Petitioner : Mr.Raja Karthikeyan
For Respondents : Mrs.J.Padmavathy Devi
Special Government Pleader

ORDER

The issue arising in this writ petition turns upon the provisions of Rule 19 of the Tamil Nadu Value Added Tax Rules, 2007 [in short 'Rules'] providing the procedure to be adopted for service on notices, summons or orders. Rule 19 reads as follows:

Rule 19.Service of notices summons or orders.- (1) The service on a dealer of any notice, summon or order under the Act or these rules may be effected either electronically or manually in any of the following ways, namely:-

R.19(1)(a) by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative; or

Explanation.- Endorsement by person who delivers the notice, summon or order of having tendered or given will be proof for the purpose of this sub-rule.

R.19(1)(b) if such dealer or his manager or agent or the legal practitioner appointed to *represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family; or*

R.19(1)(c) by sending it to the address of the dealer by registered post; or

R.19(1)(d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence in the presence of two independent witnesses.

R.19(2) Where any Hindu Undivided Family, firm or other association of persons is partitioned, dissolved or discontinued, notice, summon or order issued under the Act or these rules may be served on any member of the Hindu Undivided Family, any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before such partition, dissolution or discontinuance."

2. The petitioner has averred that the impugned order of revision of assessment dated 22.08.2014 was not received by him at all and he consequently assails the coercive recovery proceedings initiated for recovery of demand that have arisen under the impugned order of assessment.

3. A counter has been filed by the respondent stating in Paragraph No.5 that service of original assessment order was 'acknowledged by the petitioner on the same day itself'. Since the averments of the rival parties conflict on facts, records were summoned.

4. A perusal of the records indicated that the order has been received by a person by the name 'Mr.Nelson'. The petitioner confirms that the said Mr.Nelson is neither in his employment nor was he authorised to receive any communication on his behalf. He is stated to be a private Accountant who renders services on a non-exclusive basis to several contractors. He is thus an independent contractor and thus had no locus to accept any communication on behalf of the petitioner.

5. The provisions of Rule 19 are clear to the effect that service should be effected only upon the dealer himself, in this case, a sole proprietor, his Manager, Agent, Legal Practitioner or authorised representative or any adult member of his family, if served in person. Since this has not been done so, the demand enforced under the impugned proceedings being attachment of bank account dated 22.10.2018 is quashed.

6. A copy of the order of assessment has been received by the petitioner on 29.11.2018 from the assessing officer, after his request of even date. Admittedly, no appeal has been filed

challenging the same for the reason that the copy received is only a xerox copy of the original.

7. This Court is of the view that it would suffice that the petitioner be permitted to file an appeal before the appellate authority. Such appeal, shall be accepted by the registry, if filed by the petitioner within a period of three weeks from date of receipt of a copy of this order without insisting upon the original of the order of assessment.

8. This Writ Petition is allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

2.The Commercial Tax Officer,
Thirupparankundram Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai, Madurai - 625 020.

+1 CC to SPL GP (SR-75954[F] dated 18/07/2019)
+1 CC to Mr.B.ROOBAN, Advocate (SR-76091[F] dated 18/07/2019)

Order made in
W.P.(MD)No.4703 of 2019
Dated:17.07.2019

SM
MK (16.09.2019) 3P 5C