BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.02.2019
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**
W.P.(MD)No.20170 of 2016
and
M.P(MD) Nos.14460 and 14461 of 2016

M/s.Sri Vignesh Pipe Industries Private Limited,
rep., by its Director S.Prabhakaran,
S.F.No.64/5&7, Trichy Road,
Singalanthapuram, Thuraiyur. ... Petitioner

Vs

1.The Deputy Commissioner (CT),
Formerly known as Assistant Commissioner (CT),
Commercial Tax Buildings,
Karur.

2.The Commercial Tax Officer (FAC),
Thuraiyur Assessment Circle,
Thuraiyur.

3.The Sub Registrar,
Thuraiyur Registration Circle,
Thuraiyur. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in Na.Ka.No.141/2003/A3 dated 14.09.2016 issued by the second respondent and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.N.Sudalaimuthu
For Respondents : Mr.A.Thiyagarajan
Government Advocate

ORDER

The instant writ petition has been filed challenging the impugned demand dated 14.09.2016 issued by the second respondent in Na.Ka.No.141/2003/A3.

2. It is the case of the petitioner that without furnishing a copy of the Audit General's Audit Report, the second respondent has raised the impugned demand notice dated 14.09.2016, calling upon the petitioner to pay a sum of Rs.92,20,930/- (Rupees Ninety Two Lakhs Twenty Thousands Nine Hundred and Thirty only) as tax.

According to the petitioner, two waiver schemes were introduced by the respondents. One is the Sales Tax Waiver Scheme as per G.O. [Ms.]No.500 dated 14.05.1990, and the other is the Interest Free Sales Tax Deferral Scheme. According to the petitioner, he was allowed to avail the Sales Tax Waiver Scheme for a period of five years from 22.12.1992, to 21.12.1997 for a sum of Rs.14.62 lakhs. Subsequently, the waiver period was rescheduled from 01.11.1993 to 31.10.1998. Thereafter, the petitioner applied for Eligibility Certificate under Sales Tax Waiver Scheme for expansion category for their Unit which was allowed for the period from 19.09.1994 to 18.09.1999 vide E.C.No.IFST/W/001/V/KRR/94-95 dated 10.01.1995. Likewise, on the basis of the application made by the petitioner, Eligibility Certificate was issued for another expansion of Unit vide E.C.No.IFST/W/V/KRR/95-96 dated 16.02.1996, for the period of from 02.11.1995 to 01.11.2000. According to the petitioner, for all the three periods, the petitioner had fully availed the benefit of the scheme and to that effect, the second respondent had passed an assessment order for the period commencing from 1992-93 to 2000-01. It is also the case of the petitioner that he has paid the regular rate of tax without fail and filed his returns reporting the sales and purchases to the respondent without any suppression.

3. According to the petitioner, all of a sudden on 27.01.2003, the second respondent issued a notice calling upon the petitioner to file Unit-wise manufacturing details and sales details separately citing Audit General's Audit Report. On receipt of the notice, the petitioner had responded that since the records relate to the old period i.e., from 1993 and the new management had taken charge from 1999, they are facing difficulty in tracing the old records and hence, they sought time to file the same before the second respondent. The petitioner had also sought for the copies of the records like waiver agreement, assessment order passed from the period of 1992-1993, eligibility certificates issued under the Sales Tax Waiver Scheme. But according to the petitioner, till date, the second respondent had not chosen to furnish the records as requested by the petitioner, even after the lapse of more than ten years. Further, it is the case of the petitioner that they stopped their business in the year 2014 itself and the machineries have already been sold and the tax has also been paid. According to the petitioner, the second respondent had issued the impugned demand notice on 14.09.2016 for the transactions between 1994 to 2001 without furnishing the documents sought for by the petitioner as seen from the earlier correspondence made with them. According to the petitioner, having passed an assessment order accepting the returns submitted by the petitioner, the respondent cannot now make the demand based on the alleged Auditor General's Audit Report, that too, without furnishing a copy of the same to the petitioner. In such circumstances, the writ petition has been filed challenging the impugned demand notice for violation of principles of natural justice.

4. The second respondent has filed a counter affidavit, wherein, they have admitted that they were audited by the Accountant General Office, Comptroller and Audit General of India, Chennai Division. According to them, the audit team had raised objection in the year 2001 - 2002 and the draft review report issued by the Accountant General's office stated that the waiver is allowed to the petitioner in excess without protecting the passed revenue based on 'Base Protection Volume' for the year 1994 - 1995 to 1998 - 1999. According to them, the objectionable amount mentioned by the audit is Rs.45.57 Lakhs. But, they have admitted that the Joint Commissioner had appeared before the Public Accounts Committee, Tamil Nadu Legislative Assembly [2003 - 2006] on 03.01.2006 by stating that the draft review report is not acceptable and the audit wing has misconceived the two schemes, namely, the Sales Tax Waiver Scheme and the Interest Free Sales Tax Deferral Scheme.

5. Heard Mr.N.Sudalaimuthu, learned counsel appearing for the petitioner and Mr.A.Thiyagarajan, learned Government Advocate appearing for the respondents.

6. It is an admitted case that tax has been paid by the petitioner in accordance with the Sales Tax Waiver Scheme availed by the petitioner for the period from 1993-1994 to 2000-2001 and the respondent had also accepted the returns submitted by the petitioner for that period. The impugned demand has been made on 14.09.2016 based on the audit objections raised by the Comptroller and Audit General of India, but a copy of the draft CAG report has not been furnished to the petitioner. A proposal to reopen the assessment has been made by the respondent after almost 15 years, since the last of the returns were filed by the petitioner under the Sales Tax Waiver Scheme availed by them. Further, till date, the respondents have neither produced the draft report of the Comptroller and Audit General of India of the year 2006 before this Court nor have they informed this Court as to whether a final report has been passed by the CAG. As seen from the impugned demand notice, the respondents have also not furnished a copy of the draft Auditor General's Audit Report to the petitioner. The impugned demand raised by the respondent also does not disclose as to the statutory provision under which the said demand has been made. Any demand of tax and penalty can be made by the respondents only in accordance with the statutory provisions.

7.In the case on hand, the respondents have already assessed the petitioner based on the returns submitted by them. All the transactions pertain to the period 1993 to 2001, whereas the impugned demand notice has been made by the respondent only in the year 2016, without furnishing a copy of the Auditor General's Report.

8. In the light of the above observations, this Court is of the considered view that the second respondent has violated the principles of natural justice by not furnishing the details sought for by the petitioner which includes furnishing of copies of Auditor General's Report as well as other documents. Therefore, this Court is of the considered view that the impugned demand notice has to be quashed. Accordingly, the impugned demand notice is quashed. However, liberty is granted to the respondents to raise any demand against the petitioner, if the petitioner has violated any of the statutory provisions, after receipt of the final Auditor General's Audit Report. In view of the quashing of the impugned demand notice, the direction given by the second respondent under the impugned demand to the Sub-Registrar, Thuraiyur / third respondent, is also quashed.

9. With the aforesaid observation, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)

To

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Thuraiyur.

3.The Sub Registrar,
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Thuraiyur.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-49813[F] dated 26/02/2019)
+1 CC to M/s.SPL GP (SR-50144[F] dated 27/02/2019)

RMK/MR

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