IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.11414, 11416, 11419, 11422, 11425, 11428 & 11433 of 2021
and
W.M.P.Nos.12122, 12128, 12132, 12134, 12138, 12142 & 12149 of 2021

(Through Video Conferencing)

1. L.Rajesh,
   Proprietor of., Rajesh Traders,
   No.10, Sadasivam Layout, Velapadi,
   Vellore - 632 001.
   ... Petitioner in W.P.Nos.11414, 11416, 11419, 11422, 11425 & 11428 of 2021

2. M.Lakshmanan
   Prop: M/s. Rajesh And Co,
   No.158/A Opposite to EB,
   Nethaji Road, Shenbakkam,
   Vellore - 638 012. ... Petitioner in W.P.No.11433 of 2021

Vs

The Assistant Commissioner (ST),
Vellore (Rural),
No.4, Bharathiyar Salai, C.T.Complex,
Fort Round, Vellore - 1. ... Respondent in all W.Ps.

Prayer in W.P.Nos.11414, 11416, 11419, 11422, 11425 & 11428 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondent leading to the issuance of impugned assessments order vide TIN: 33634323714/2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016 respectively dated 21.12.2018 to the petitioner and quash the same as illegal, arbitrary, ultra vires and consequently direct the respondent herein to forbear from giving effect to the assessment order.

Prayer in W.P.No.11433 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondent leading to the issuance of the impugned notices vide reference

Na.Ka.A3./1445/2008 dated 26.09.2020 issued by the respondent to the petitioner and vide reference A3.TIN 33634323714 dated 09.12.2020 issued by the respondent to the petitioner's bankers with a copy issued to the petitioner and quash the same as illegal, arbitrary, ultra vires and consequently direct the respondent herein to forbear from giving effect to the two impugned notices.

For Petitioner : Mr.S.Giritharan
(in all W.Ps)

For Respondent : Mr.D.Ravichander
(in all W.Ps) Special Government Pleader(Taxes)

COMMON ORDER

The petitioner in W.P.Nos.11414, 11416, 11419, 11422, 11425 & 11428 of 2021 L. Rajesh S/o M.Lakshman, the writ petitioner in W.P.No.11433 of 2021 has filed these writ petitions to call for the records of the respondent leading to the issuance of impugned assessments order vide TIN: 33634323714 / 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016 respectively dated 21.12.2018 issued to the petitioner and to quash the same as illegal, arbitrary, ultra vires and consequently direct the respondent herein to forbear from giving effect to the assessment order.

2. The petitioner in W.P.No.11433 of 2021 M. Lakshman father of L.Rajesh in W.P.No.11433 of 2021 has filed this writ petition to call for the records of the respondent leading to the issuance of the impugned notices vide reference Na.Ka.A3./1445/2008 dated 26.09.2020 issued by the respondent vide reference A3.TIN 33634323714 dated 09.12.2020 attaching the said the petitioner's bank account with a copy issued to the petitioner and quash the same as illegal, arbitrary, ultra vires and consequently direct the respondent herein to forbear from giving effect to the two impugned notices.

3. The petitioners herein are the son and father respectively. The brief facts of the case are there. The petitioner (L.Rajesh) in W.P.Nos.11414 etc., batch was carrying on a business under the name and style of M/s. Rajesh Traders and had surrendered the Registration Certificate obtained under the Tamil Nadu Value Added Taxt Act, 2006 on 02.02.2017.

4. The said petitioner was engaged in the said business from 2010. After the registration was cancelled, the enforcement wing of the Commercial Tax Department made a surprise visit to the business premises of the said petitioner and called upon the

said petitioner to furnish the details of the turnover between the period 2010-11 and 2015-16 within a period of one week. However, the said petitioner (L.Rajesh) in W.P.Nos.11414 etc., batch, failed to furnish the details.

5. Under these circumstances, separate notice for the Assessment Years namely 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016 were attempted to be served on the petitioner(L.Rajesh) in W.P.Nos.11414 etc., batch, at the business presmises.

6. The notice sent for reopening the assessment was received by the petitioner on 10.03.2017. Thereafter, a proposal was received from the Commercial Tax Department pursuant to which a notice dated 30.06.2017 for the respective Assessment Years which were sought to be served on the petitioner.

7. As the petitioner had closed down the business from the aforesaid business premises, the notices were returned with an endorsement left. The petitioner had a main place of business at No.37, Bazaar Street, Odugathur, Vellore-632 103, and also had an additional place of business at No.H-4, Old Bye Pass Road, Vellore (W.E.F.26.06.2008), No.38, Lakshmipuram, Lakshmi Complex, Salavanpet, Vellore (W.E.F.19.04.2010) and in Nethaji Road, (Near E.B.) Shenpakkam, Vellore. (W.E.F.11.05.2010), and the additional place of the business were at No.158/A Opposite to EB, Nethaji Road, Shenbakkam, Vellore - 638 012 was running by the petitioner (M.Lakshmanan) in W.P.No.11433 of 2021.

8. After a notice dated 30.06.2017, seeking to reopen the assessment under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 were returned, the notices were sent to the permanent place of residence of the petitioner in all of the writ petitions.

9. These notices were also returned and under these circumstaces, the respondent has proceeded to pass the Impugned Order dated 21.12.2018, and has affixed the order in the principle place of business of the said petitioner.

10. The total tax due as determined in the impugned orders is Rs. 87,11,227/- and the penalty of Rs. 31,59,863/- cumulatively amounting to Rs. 1,18,71,140/- as detailed below:-

	Tax	Penalty	Total
2010-11	Rs.12,09,214.00	Rs.18,13,821.00	Rs.30,23,035.00
2011-12	Rs.23,01,639.00	Rs.3,31,666.00	Rs.26,33,305.00
2012-13	Rs.26,51,733.00	Rs.4,69,296.00	Rs.31,21,029.00

	Tax	Penalty	Total
2013-14	Rs.16,98,576.00	Rs.1,94,207.00	Rs.18,92,783.00
2014-15	Rs.7,32,627.00	Rs.1,93,562.00	Rs.9,26,189.00
2015-16	Rs.1,17,488.00	Rs.1,57,311.00	Rs.2,74,799.00
	Rs87,11,277.00	Rs.31,59,863.00	Rs.1,18,71,140.00

11. Learned counsel for the respondents, submits that since both the petitioners are living in the same house and are part of the same joint family the respondent was entitled to attach the bank account of the writ petitioner in W.P.No.11433 of 2021, (M.Lakshman). It is further submitted that the additional place of business of the petitioner in W.P.No.11414 of 2021 etc., batch was the same as the main place of business of the writ petitioner in W.P.No.11433 of 2021 and therefore, the respondent is justified in attaching the Bank Account.

12. It is submitted that though the attachment was made to the bank account of the petitioner's father in W.P.No.11433 of 2021 (M.Lakshman), it was lifted by this Court vide order dated 30.04.2021 and therefore, it is submitted that the attachment order should be allowed to continue till the amount due is paid by the petitioner in W.P.No.11414 of 2021 etc., batch.

13. Heard learned counsel for the petitioner and for the respondents. Perused the impugned order dated 21.12.2018 for the respective assessment years 2010-11 etc., batch and the demand notice. The facts on record indicate that the petitioner in W.P.No.11414 of 2021 etc., batch had closed on the business on 02.02.2017. The enforcement wing realized that there was something amiss as the said petitioner had closed on the business and therefore, to call upon him to furnish the details.

14. However, the petitioner in W.P.No.11414 of 2021 etc., batch. did not co-operate with the respondent and therefore, the impugned orders came to be passed by demanding tax. Though the dispute pertains to the year between 2010-11 and 2015-16, the petitioner in W.P.No.11414 of 2021 etc., batch. has not shown any sincerity in taking steps either by filing an appeal or depositing any amount to discharge the tax liability by filing returns. It is however not clear on what basis the aforesaid demand of Rs. 87,18,277/- has been determined in the above said impugned orders. No records were produced to substantiate the above demand by the Respondent.

15. The proper method was to determine tax by invoking best judgement method under the Act. Considering the fact that the said petitioner has also not participated in the proceedings before the respondents by responding to the notice issued prior to the assessment order dated 21.12.2018 nor paid any amount. The impugned orders dated 21.12.2018 are quashed subject to the petitioner in W.P.No.11414 of 2021 etc., batch in depositing a sum of Rs.25 lakhs within a period of 60 days from the dated of receipt of copy of this order with the respondent as and when such deposit is made by the petitioner within the aforesaid period, in two instalments the respondent shall take up the case and pass fresh order on merits and in accordance with law.

16. The impugned orders which stand quashed subject to payment of the aforesaid amount within the aforesaid period, shall be treated as Show Cause Notice to the petitioner. If required the respondent shall issue a corrigendum to the aforesaid Show Cause Notice (Order quashed hereien) which has to be answered by the petitioner within a period of 45 days from the date of receipt of the order, also the petitioner is at liberty to take out all defences available to him that are known under law within the period of 30 days. While giving the aforesaid reply, the respondent shall endeavour to pass final order within a period of 180 days thereafter. It is made clear that the amount directed to be paid pursuant to this order shall be treated as "deposit" and shall be appropriated only subject to final the outcome of the remand proceedings.

17. If the petitioner fails to deposit the amount, within the specified time the impugned orders dated 21.12.2018 which stand quashed by this order shall stand revived and sine-dine without further order to this Court. Under these circumstances the respondent is at liberty to recover the amounts, already determined, from the petitioner in accordance with law.

18. In the light of the above observations it is made clear that both the writ petitioners son and father respectively are independent petitioners and separate assessee under the Tamil Nadu Value Added Tax, Act 2006 and therefore there is no justification sustaining in the aforesaid order. Thus it is made clear that:-

(i) Writ petition of Son namely L.Rajesh in W.P.No.11414 of 2021 etc., batch stands disposed of in terms of the above observations.

(ii) Writ petition of Father namely M.Lakshman in W.P.No.11433 of 2021 stands allowed.

Consequently Connected Writ Miscellaneous Petitions are closed. There shall be no order as to costs.

nst/rgm 26.11.2021

Being Metioned

This matter having been listed on 03.03.2022 under caption for "Being Metioned" in presence of this order of this Court dated 26.11.2021 and made herein, in the presence of Mr.S.Giridharan, Advocate for the Petitioner's and Mr.D.Ravichander, Special Government Pleader (Taxes) for the Respondent, this Court made in following order.

These cases are listed today under the caption ''for being mentioned'' at the instance of the learned counsel for the petitioners.

2.The learned counsel for the petitioners submits that a member of the petitioners' family is suffering from serious illness and therefore, it may not be possible to deposit the entire amount of Rs.25,00,000/- as has been ordered.

3.Though there are no records to substantiate the same, I am inclined to extend the period of pre-deposit by another 60 days from today, failing which, the order dated 26.11.2021, made in W.P.Nos.11414, 11416, 11419, 11422, 11425, 11428 & 11433 of 2021, shall stand automatically cancelled.

Smn2 03.03.2022

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST), Vellore (Rural), No.4, Bharathiyar Salai, C.T.Complex, Fort Round, Vellore - 1.	To be Substituted the order already despatched on 12.01.2022

+2ccs to Mr.S.Giritharan, Advocate, S.R.No.61615
+1cc to the Special Government Pleader(Taxes), S.R.No.62017,62018
+1cc to Mr.S.Giritharan, Advocate, S.R.No.14679(08/03/2022)

W.P.Nos.11414, 11416, 11419, 11422, 11425, 11428 & 11433 of 2021
and
W.M.P.Nos.12122, 12128, 12132, 12134, 12138, 12142 & 12149 of 2021

GJ[co]
NSK 29/12/2021
NSK 04/03/2022