IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.14740 of 2020
and WMP.Nos.18319 & 18320 of 2020

P.Thirupatham Valenteena ...Petitioner

Vs.

1. The Assistant Commissioner (CT)(FAC)
   Villupuram-II Assessment Circle,
   Villupuram.

2. The Assistant commissioner (ST)
   Villupuram-II Assesssment Circle,
   Villupuram.

3. The Joint Sub Registrar No.II,
   Villupuram.

4. The Deputy Commissioner (ST)
   Territorial Villupuram-605602.

5. D.Solomon Jacob Raj ...Respondents

(R5 impleaded vide order dated 04.12.2020 made in WMP.No.21782/2020 by ASMJ)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent addressed to the third respondent in Na.Ka.A3.422/2016 dated 9.9.2016 and quash the same as issued contrary to the provisions of the TNVAT act and against the principles of natural justice and further direct the first and second respondents to remove/lift the encumbrances created on the petitioners property i.e house property measuring 112.60 square meters in Plot No.MIG B 203, situated at survey No.24/13, 24/14A, 24/14B and 24/16 in Tamil Nadu Housing Board, Maharajapuram, Villupuram-605 602, Villupuram Taluk and District.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.TNC.Kaushik
Government Advocate (R1 to R4)
Mr.P.V.Sudhakar (R5)

O R D E R

Heard Mr.P.Rajkumar, learned counsel for the petitioner, Mr.TNC.Kaushik, learned Government Advocate for the Commercial Taxes Department and Mr.P.V.Sudhakar, learned counsel for R5.

2. The petitioner is the mother of a dealer registered under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'). The property of the petitioner has been attached for securing the alleged arrears of sales tax of her son/dealer and hence it was thought appropriate that the dealer also be impleaded as a respondent. He has been impleaded as R5.

3. As far as the question of arrears of sales tax of R5 is concerned, Mr.Sudhakar would dispute such arrears, stating that as no orders of assessment raising demands have been served upon R5, the question of arrears does not arise. However I am not, in this writ petition, concerned with this sales tax assessments of R5. Thus, this is matter concerning R5 and the official respondents, and the latter shall, in light of my decision in this writ petition, take suitable measures for recovery of sales tax arrears of R5, in accordance with law.

4. The challenge in this Writ Petition is to an order of attachment of immovable property, at Plot No.MIG B 203, survey No.24/13, 24/14A, 24/14B and 24/16, Tamil Nadu Housing Board, Maharajapuram, Villupuram-605 602, Villupuram Taluk and District (property/property in question) that admittedly, belongs to the petitioner. According to the petitioner, the property has been attached by the Joint Sub-Registrar II, Villupuram/R3 at the instance of the Commercial Taxes Department for alleged arrears of sales tax of R5.

5. R5 had applied for issuance of a registration certificate under the provisions of the Act, by application dated 05.08.2013. Certificate bearing CST No.389904 dated 12.08.2013 was issued, effective from the date of application, being 05.08.2013. Admittedly R5 has, along with the application for registration, also submitted Form F offering the schedule property as security.

6. The provisions of Section 39 deal with the procedure for registration. Sub-section (1) provides for an application for registration accompanied by appropriate fee in that regard. Sub-section (2) states that the authority concerned, if satisfied that the application were in order, register the application and grant a certificate of registration to him for the principal place of business with copies for each of his place of business.

Sub-section (3) states that the effective date of registration shall be stipulated in the certificate.

7. Sub-section (4) of Section 39, with which we are concerned, is extracted below:

> (4) Where it appears necessary to the authority granting certificate of registration under this section so to do for the proper realisation of the tax payable under this Act, it may, at any time, while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security or, if the dealer has already furnished any security in pursuance of an order under this sub-section, such additional security, as may be specified in the order for the aforesaid purpose.

Sub-section (5) states that the requirement of security or additional security under sub-section (4) shall be only after an opportunity is granted to the dealer. The other clauses of Section 39 do not concern us.

8. The provisions of sub-section (4) provide for an order to be passed in writing, recording reasons therein as to the requirement for furnishing of security. In this case, there is no order that has been passed by the Assessing Authority as required under Section 39(4). However, such an order was rendered unnecessary as security was furnished voluntarily and Form F executed by the petitioner has accompanied the application for registration. The petitioner thus cannot be seen to eschew the Form that was given voluntarily by him.

9. However, it is also a fact that security is, in fact, required to be given only for certain enumerated categories of commodities. This has been clarified under Circular 2 of 2014 dated 28.01.2014 issued by the Principal Secretary and Principal Commissioner of Commercial Taxes, wherein at paragraph 10, it is stated as follows:

Circular No. 2/2014
[Roc. No. Taxation Cell/2316/2014]

Office of the Principal
Secretary & Commissioner
of Commercial Taxes,
Chepauk,Chennai - 600005

Dated 28.01.2014

CIRCULAR

Sub: TN VAT Act, 2006 - Issue of Registration Certificate to the dealers - Certain instructions issued earlier - Revised instructions- Issued - Regarding.

....

10. Regarding security deposit, Rule 5 of the TNVAT Rules 2007 shall be followed. No security deposit should be demanded from the applicant-dealer who applies for new registration. At the same time, the Registering Authorities are at their liberty to demand earnest security in any form as contemplated under clauses (a) to (d) of Rule 5 of TNVAT Rules, 2007, in the case of registration of business concerns in the line of evasion prone commodities, like Electrical goods, Iron & Steel, Ceramic Tiles, Marble and Granite, Timber, Edible Oil & Oil Seeds and Raw Rubber in order to ensure proper realization of tax. The quantum of such security in term deposits in banks or NSC or Postal Savings Bank Deposit should not exceed 50 percent of the tax due and payable on the reasonable estimate of the taxable turnover for a year .

10. The petitioner in this case, is a dealer in shaving blades, which does not fall under the enumerated categories. Thus, without going into the question of whether the provisions of Section 39(4) have been complied with or not, it would merely suffice to say that there was no warrant or justification for any security to have been furnished at all. As a consequence, the attachment of the property is not in line with the applicable provisions and Rules and is hence set aside. Let R3 take necessary action within a period of four (4) weeks from today in regard to the lifting of the encumbrance upon the scheduled property.

11. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT)(FAC)
   Villupuram-II Assessment Circle,
   Villupuram.

2. The Assistant commissioner (ST)
   Villupuram-II Assesssment Circle,
   Villupuram.

3. The Joint Sub Registrar No.II,
   Villupuram.

4. The Deputy Commissioner (ST)
   Territorial Villupuram-605602.

+1 CC to Mr.P.Rajkumar, Advocate, Sr.No. 37583.
+1 CC to The Special Government Pleader, Sr.No. 37576.

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AJS(CO)
LS(26/08/2021)