IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.16018, 16019, 16022, 16023, 16024, 16025 of 2020
WMP.Nos.19928, 19930, 19933, 19935, 19929 & 19934 of 2020

Tvl. Sathish Ceramics & Refractories
Prop: S. Sumathi ...Petitioner in all WPs

Vs.

1. The State of Tamil Nadu
   Represented by the Secretary
   Commercial Taxes Registration Department
   Fort St. George, Chennai-9

2. The State Tax Officer
   Virudhachalam Assessment Circle
   Virudhachalam, Cuddalore District ...Respondents in all WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of certorarified calling for the records of the 2nd respondent proceedings in TIN 33614423344/2014-15 2013-2014, 2010-2011, 2009-2010, 2011-2012 and 2012-2013 dated 12.01.2018, 29.12.2017, 29.12.2017, 29.12.2017, 12.01.2018 respectively quash the same and consequently unfreeze the bank transaction.

In all WPs
For Petitioner : Mr.R.Sivakumar

For Respondents : Mr.TNC Kaushik
Government Advocate

COMMON ORDER

Heard Mr.R.Sivakumar, learned counsel for the petitioner and Mr.TNC Kaushik, learned Government Advocate for the respondents.

2. The petitioner, a proprietary concern managed by one, S.Sumathi, who has deposed to the affidavit filed in respect of the writ petition, challenges orders of assessment dated

29.12.2017 for the periods 2009-10 to 2011-12 and 12.01.2018 for the periods 2012-13 to 2014-15, passed in terms of the provisions of the Valued Added Tax Act, 2006 (in short 'Act').

3. At the time of admission, the learned counsel for the petitioner was to explain the laches in filing the writ petitions, beyond the period of statutory limitation. Though the assessments are dated 29.12.2017 and 12.01.2018, the writ petitions have been presented only on 08.10.2020.

4. I have taken a view in a batch of matters in Kesaav Ply and Laminates Vs. The Assistant Commissioner (ST) (W.P.Nos.15679 of 2020 and batch order dated 03.03.2021) to the effect that where writ petitions challenging sales tax orders of assessment have been filed beyond the limitation prescribed under statute, the maintainability of the writ petitions would first have to be decided taking note of the explanation of the petitioner. In this case, the explanation is that though the orders are dated 29.12.2017 and 12.01.2018, they were never served upon the petitioner and it came to know of the same only when coercive recovery proceedings were initiated to collect the outstanding demands.

5. Learned counsel for the respondents was directed to confirm whether the orders of assessment have been served upon the petitioner. In the counter filed by the respondent, apart from dealing with the merits of assessment, it is stated at para 19 that pre-revision notices as well as the impugned orders of assessment have been served by registered post with acknowledgment due on the registered place of business and hence, service was complete as contemplated under the Act.

6. The respondents have placed on record the acknowledgment for service which shows that the orders have been received by a person not identified and the signature on the acknowledgment card does not match the signature of the petitioner as seen upon comparison of the same with the signature in the affidavit filed in respect of the writ petitions. In such circumstances, I am not in a position to come to a conclusion that service is complete.

7. Section 19(1) (a) (b) and (c) of the Tamil Nadu Valued Added Tax Rules, 2007 (TNVAT Rules) deal with direct service upon the asessee or his representative such as his manager, agent, legal practitioner, authorized representative or any other member of his family. Since the signature does not reveal that the receipt of the impugned orders of assessment is upon any of the persons enumerated aforesaid, service, in my view, is not complete and the benefit of doubt in this case would have to be given to the petitioner.

8. The impugned orders of assessment will be taken to be show cause notices and the petitioner is permitted to file a reply to the same within a period of six weeks from today. If no reply is filed as permitted hereinbefore, the impugned orders of assessment will stand revived. Upon receipt of the response, let a notice of personal hearing be issued to the petitioner and the petitioner heard, preferably virtually, on a date mutually convenient to both parties. Orders of assessment be passed thereafter and de novo, within a period of six weeks from date of personal hearing.

9. These writ petitions are disposed in the aforesaid terms. Connected miscellaneous petitions are closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Secretary
   The State of Tamil Nadu
   Commercial Taxes Registration Department
   Fort St. George, Chennai-9

2. The State Tax Officer
   Virudhachalam Assessment Circle
   Virudhachalam, Cuddalore District

+2 CCs to Mr.R.Sivakumar, Advocate, Sr 30517.
+1 CC to Special Government Pleader (Taxes), Sr 30936.

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SKY(CO)
LS(23/08/2021)