

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 25.01.2021  
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM  
and  
THE HONOURABLE MS.JUSTICE R.N.MANJULA

|                                  |                                    |
|----------------------------------|------------------------------------|
| Orders Reserved On<br>08.01.2021 | Orders Pronounced On<br>25.01.2021 |
|----------------------------------|------------------------------------|

W.A.No.1146 of 2020  
and  
C.M.P.No.14068 of 2020

J.Tezoram ... Appellant

-vs-

1.The Assistant Commissioner (CT),  
(F.A.C.), N.S.C., Bose Road Assessment Circle,  
Elephant Gate Bridge Road,  
Chennai-600 003.

2.The Branch Manager,  
Syndicate Bank,  
George Town Branch,  
Chennai-600 001.

... Respondents

Appeal under Clause 15 of the Letters Patent to set aside  
the order dated 08.10.2020 made in W.P.No.172 of 2020.

Prayer in WP.No.172 of 2020 : Writ Petition filed under Article  
226 of the Constitution of India praying to Writ of Certiorari  
to call for the records pertaining to the impugned order passed  
by the 1<sup>st</sup> Respondent in R.C.No.651/2015 dated 10.09.2015 and  
Quash the same as illegal and unconstitutional.

For Appellant : Mr.K.M.Malarmannan  
For Respondents : R1 - Mr.Md.Shaffiq,  
Special Government Pleader (Taxes)

JUDGMENT

*T.S.Sivagnanam, J.*

This appeal filed by the appellant/writ petitioner is  
directed against the order dated 08.10.2020, passed in  
W.P.No.172 of 2020.

2.Heard Mr.K.M.Malarmannan, learned counsel for the appellant/writ petitioner and Mr.Md. Shaffiq, learned Special Government Pleader for the first respondent/Department.

3.The appellant filed the said writ petition challenging the order of assessment dated 10.09.2015, passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006, for the assessment year 2014-15.

4.The appellant's case is that he is not the Proprietor of M/s.Rajaram Lamp House and his father, Mr.Jodharam, was running the said business in Shop No.5, Kasi Chetty Street, Sowcarpet, Chennai-600 079.

5.The appellant would state that the place of business was inspected by the Officials of the Enforcement Wing on 15.10.2014, and certain defects were pointed out and the appellant's father was directed to pay a sum of Rs.3,45,850/- towards tax in respect of the stock held by him in the shop during the inspection.

6.It is the further case of the appellant that his father, due to ill-health, had closed down the business and left for Rajasthan during the end of 2015. The appellant also had gone to his native place and he returned to Chennai during September, 2019 and on his return, found that his bank account, maintained with the Syndicate Bank, George Town Branch, Chennai, was freezed by the first respondent/Department.

7.The appellant would state that he was not served with any notice before passing the assessment order dated 10.09.2015, and the same is in violation of the principles of natural justice. Further, the appellant would state that the Department cannot proceed against him, as it is his father, who was running the business and he had closed down the business in the year 2015 and before that, he had cleared the arrears of tax and therefore, the impugned assessment order has to be quashed.

8.The first respondent, viz., the Assessing Officer, in their counter affidavit, filed in the writ petition, has extensively set out the factual matrix to show that the appellant was involved in the said business and was present at the time of inspection and the pre-assessment notice dated 11.06.2015, was served on the dealer on 19.06.2015, but no objections were filed and therefore, final order of assessment was passed on 10.09.2015.

9.The stand taken by the appellant that the business was closed down by his father was disputed and the Department would

state that no such intimation was given to the Department about the closure of the business.

10.The Department would further state that the appellant was carrying on the business and therefore, he is liable to clear the arrears of tax and penalty. Further, demand notices were served as early as on 14.12.2017 and 18.12.2017, and the stand taken by the appellant in the writ petition is wholly unsustainable. Further, the appellant, having been involved in the business along with his father, he is jointly and severally liable to pay the dues payable by his father and he cannot escape by contending that he has got nothing to do with the business.

11.Taking note of the submissions made on either side, the learned Single Bench, with a view to ascertain the veracity or otherwise of the stand taken by the appellant, had summoned records from the Department. The compilation dated 08.09.2020, which was filed in the writ petition, contains the copy of the statement recorded at the time of inspection on 20.10.2014. The statement showed that the appellant as well as his father were in the premises when the inspection was conducted. The compilation also contains acknowledgement of the receipt of the pre-assessment notice dated 11.06.2015, which was received by an individual, who has signed and affixed the seal of the said dealer.

12.The Writ Court also noted that the order of assessment dated 10.09.2015, which was impugned in the writ petition, has been returned with a postal endorsement "returned". The Writ Court, further, found that the order of assessment was served to two different addresses of which, one was returned with a postal endorsement "refused" and the second was returned with the postal endorsement "left".

13.Thus, taking note of the fact that the order of assessment was refused to be received, the learned Writ Court rightly held that the service of the notice was complete. Since the appellant had insisted that the business was not functioning, the Writ Court had directed the Revenue to make a visit to the business premises and file a report. Pursuant to such direction, the Assessing Officer, viz., the first respondent had made a visit to the business premises and filed a report through e-mail dated 07.10.2020, annexing photographs, which showed that the entity was functioning and carrying on business in the same address. Therefore, the learned Writ Court held that there is no jurisdiction whatsoever to entertain the writ petition, as the delay between 2015 and the date of passing the order in the writ petition remained unexplained. That apart, the learned Writ Court found that the explanation, given

by the appellant with regard to the delay, was factually incorrect. With the above reasoning, the writ petition was dismissed.

14. Before us, the learned counsel for the appellant reiterated the stand taken before the learned Writ Court and submitted that the appellant cannot be proceeded with. As noted by the learned Writ Court, the pre-assessment notice was received, though it is not clear as to who has signed the notice. Nevertheless, the seal of the dealer was affixed in the acknowledgement, which finds place in the compilation filed before the learned Writ Court. That apart, the order of assessment, which was impugned in the writ petition, was sent to two addresses and in respect of one of the addresses, the order of assessment was returned with the endorsement "refused", which would mean that the order of assessment has been served in accordance with law and the Department cannot be faulted. That apart, due to the insistence of the appellant contending that the business was not carried on any longer ever since 2015, the learned Writ Court issued direction to the Assessing Officer to inspect the business premises and file a report. This direction was complied with by the Assessing Officer and an inspection was conducted and a report dated 07.10.2020, was filed before the learned Writ Court duly supported by photographs. The report clearly showed that the appellant was carrying on business in the very same premises. Therefore, the stand taken by the appellant that he has nothing to do with the business was found to be a false submission. Even before us, the delay from the year 2015 has not been explained.

15. Furthermore, the Department was not intimated about the alleged closure of business by the appellant's father. The Registration Certificate, granted to the dealer, continued to remain valid and part payment was made by the dealer, which was given credit to in the assessment order. As could be seen from the computation given in the assessment order dated 10.09.2015, as against the total tax demand of Rs.10,54,509/-, a sum of Rs.1,53,943/- has been paid and the balance amount payable is Rs.9,00,566/-. The penalty was calculated at Rs.15,81,763/- at 150% of the tax due of which, a sum of Rs.2,30,915/- was paid and the balance payable is Rs.13,50,848/-. Therefore, the case, as projected by the appellant, having been found to be false by the learned Writ Court, after directing an inspection to be conducted, we find there is no justifiable ground made out by the appellant to interfere with the order passed by the learned Writ Court.

16. During the course of hearing, the Court suggested to the learned counsel for the appellant that if the appellant is ready and willing to clear the entire tax arrear, the Court may be

inclined to grant opportunity to the appellant to go before the Assessing Officer and file their objections. However, the learned counsel for the appellant had no instructions on this regard and continued to reiterate the submission made before the learned Writ Court and the grounds raised in the writ petition.

17.As pointed out earlier, the pre-assessment notice was received by the dealer, the order of assessment was communicated to the dealer in the manner known to law. Further, the stand taken by the dealer that they are not carrying on business was found to be false, as could be seen from the inspection report submitted by the Assessing Officer pursuant to the interim direction granted by the learned Writ Court. Thus, we find there are absolutely no ground made out by the appellant to interfere with the order passed in the writ petition dated 08.10.2020.

18.For the above reasons, the writ appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner (CT),  
(F.A.C.), N.S.C., Bose Road Assessment Circle,  
Elephant Gate Bridge Road,  
Chennai-600 003.

+1cc to Mr.K.M.Malarmannan, Advocate, SR.No.3928

+1cc to The Special Government Pleader(Taxes), Sr.No.3985

AKM/12.02.21 /5p-4c/

W.A.No.1146 of 2020

25.01.2021

WEB COPY