IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

W.A.No.1196 of 2020

R.Sukumar ...Appellant

Vs

1. The Principal Secretary to Government,
   Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Additional Commissioner (RP),
   Commercial Taxes,
   O/o. The Commissioner of
   Commercial Taxes, Ezhilagam,
   Chepauk, Chennai 600 005.

3. The Joint Commissioner (CT),
   Trichy Division,
   Commercial Taxes Building,
   Court Compound, Cantonment,
   Trichy - 620 001.

4. The Assistant Commissioner (ST),
   Gandhi Market Circle,
   Govt. Multi-storied Buildings,
   Kajamalai Colony, Trichy - 620 020.

5. Lakshmi Ammal

6. Jayalakshmi Seker ...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order made in W.P.No.16105 of 2020 dated 10.11.2020.

W.P.No.16105 of 2020:
Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus Calling for the records relating to the impugned orders (i) R.C.No.703/2014/B4 dt. 06.03.2017 passed by the 4th respondent

(ii) Order dt.25.05.2017 vide Revision Petition No.8/2017 passed by the 3rd respondent and (iii) order dated 26.09.2020 in RA1/R.P.No.81/2017 and order in the Review Petition vide letter No.RA1/17896/2017 dt.17.10.2020 passed by the 2nd respondent and quash the same and consequently direct the 2nd respondent to decide the petitioner's revision petition dt. 12.06.2017 and review petition dt.17.10.2020 on merits afresh after hearing all the parties concerned in accordance with law, within a time fixed by this Hon'ble Court.

For Appellant :Mr.K.Premkumar

For Respondents:Mr.Mohammed Shaffiq, Spl. GP
for R1 to R4

Mr.B.Vijay
for R5 & R6

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

We have heard Mr.K.Premkumar, learned counsel for the appellant, Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the respondents 1 to 4 and Mr.B.Vijay, learned counsel for the respondents 5 and 6.

2. This writ appeal has been filed by the writ petitioner against the order dated 10.11.2020 made in W.P.No.16105 of 2020, wherein the appellant challenged the order passed by the Assistant Commissioner (CT), Trichy, dated 06.03.2017 and the order passed by the Joint Commissioner (CT), Trichy, the revisional authority, dated 25.05.2017 in Revision Petition No.8/2017 and the order dated 26.09.2020 in RA1/R.P.No.81/2017 and order in the Review Petition vide letter dated 17.10.2020 passed by the Additional Commissioner (RP), Commercial Taxes, Chennai and for a consequential direction to the Additional Commissioner of Commercial Taxes (RP) to decide the appellant's Revision Petition dated 12.06.2017 and Review Petition dated 17.10.2020 on merits afresh after hearing the parties.

3. The learned Writ Court, by order dated 10.11.2020, dismissed the writ petition confirming the order passed by the third respondent, namely Joint Commissioner (CT), Trichy Division, Trichy and directed the Joint Commissioner to decide the question of maintainability of the revision petition filed by the appellant and if it is found that the petition is admissible, the Joint Commissioner shall consider all issues arising therefrom de novo and pass orders within a time frame.

4. The dispute between the appellant and the fifth and sixth respondents is a landlord tenant dispute, which is now pending before the Rent Controller, Trichy in R.C.O.P.No.193 of 2001. The tenancy was originally in favour of the fifth respondent and her husband C.Muthiah Nadar, who is no more and therefore, the sixth respondent, their daughter has been impleaded. In these proceedings, the dispute is with regard to the correctness of the registration certificate granted in favour of the fifth and sixth respondents under the provisions of the Tamil Nadu Value Added Tax Act, 2006 ('TNVAT Act' for brevity) registering them as a dealer in stainless steel products.

5. There are several allegations made by the appellant and primarily it is contended that bogus documents have been furnished to obtain the registration under the Sales Tax Act and the matter requires to be enquired into. Undoubtedly, the Joint Commissioner of Commercial Taxes, who is the revisional authority, is entitled to test the correctness of any order passed by lower authorities in exercise of the power under Section 54 of the TNVAT Act. Therefore, there can be no issue as regards the maintainability of the petition before the Joint Commissioner requesting him to exercise revisional jurisdiction.

6. Though there was a change of officer and the new officer has taken over as Joint Commissioner during the pendency of this appeal, he has also taken a prima facie view that the petition is not maintainable. However, the Joint Commissioner need not have any such apprehension in their mind and they will be well within the jurisdiction to exercise revisional powers under Section 54 to test the correctness of the registration certificate granted in favour of the fifth and sixth respondents.

7. The appellant has an apprehension to go before the present incumbent, who is occupying the office of the Joint Commissioner, Trichy and requested that some other officer may be nominated to enquire into the matter.

8. Though the learned counsel for the respondents 5 and 6 submitted that the Joint Commissioner has independently taken a decision and the allegation of bias is not tenable, this Court is of the view that in the interest of justice and fair play, a new officer should take a decision in the matter and accordingly, this Court suggested to the learned Special Government Pleader to get information from the Principal Secretary of Commercial Taxes to nominate a particular officer to take an independent decision in the matter. In accordance with such an observation made by this Court, the Principal Secretary/Commissioner of Commercial Taxes, by letter dated 04.03.2021 addressed to the Special Government Pleader (Taxes),

has nominated Tmt.S.Razeya, Joint Commissioner (State Taxes)/ Madurai Intelligence Wing to decide the issue.

9. In the light of the consensus between the parties, this Court directs Tmt.S.Razeya, Joint Commissioner (State Taxes)/ Madurai Intelligence Wing to decide the revision petition filed by the appellant.

10. Accordingly, the writ appeal is allowed to the extent indicated and the revision petition filed by the appellant dated 12.06.2017 and the review petition dated 17.10.2020 shall be placed before Tmt.S.Razeya, who shall issue notices to the appellant as well as respondents 5 and 6, afford an opportunity of personal hearing, go through the entire records which may be placed for consideration and then take an independent decision on merits and in accordance with law. No costs.

11. The above direction shall be complied with within a period of 3 months from the date of receipt of a copy of this judgment making it clear that the appellant and the respondents 5 and 6 shall extend full cooperation during the enquiry. It is made clear that this Court has not expressed any of its views on the merits of the matter.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

hvk
To
1. The Principal Secretary to Government,
   Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Additional Commissioner (RP),
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   O/o. The Commissioner of
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   Govt. Multi-storied Buildings,
   Kajamalai Colony, Trichy - 620 020.

5.Tmt.S.Razeya, Joint Commissioner
  (State Taxes) Madurai Intelligence Wing

+1 Cc to Mr.B.Vijay, Advocate sr 15665.
+1 CC to Mr.K.Premkumar, Advocate sr 15532.
+1 CC to Special Government Pleader sr 16133.

W.A.No.1196 of 2020

AKII(CO)
SP(15/04/2021)