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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.22286 of 2021
and W.M.P.Nos.23507 & 23508 of 2021

(Through Video Conferencing)

J.Ibrahim ... Petitioner

vs

1.The Deputy State Tax Officer,
Cuddalore Town Assessment Circle,
Sub-Jail Road,
Cuddalore 607 001.

2.The Proprietor,
Dhanalakshmi Traders,
124, A.J.Colony, I Street,
Royapuram,
Chennai 600 013. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, call for the records and quash the impugned order dated 14.09.2021 passed by the 1st respondent in TIN : 33054381942/2015-16.

For Petitioner : Mr.D.Baskar

For R1 : Ms.Amirta Dinakaran
Govt.Advocate.

ORDER

This is a second round of litigation by the petitioner. By an order dated 06.01.2021 in W.P.No.15902 of 2018 filed earlier was disposed with the following observation:

> "3. I have considered the arguments of the learned counsel for the petitioner and the learned counsel for the respondents.

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4. The Writ Petition in W.P.No.44178 of 2016 came to be disposed at the time of admission itself and it has left open for speculation by both the petitioner and the respondents as to whether indeed an order had been passed earlier. In the counter, it is stated that the order dated 13.09.2016 had been served on the petitioner on 03.11.2016. According to the petitioner, no such order was passed or communicated. Be that as it may, the complaint of the petitioner appears that the TIN number has been misused by one Dhanalakshmi Traders and that fake bills were generated and therefore he has faced unnecessary demand notice pursuant to which the impugned recovery proceedings have been initiated.

5.This matter would require proper adjudication by the respondent. Under these circumstances, I set aside the impugned order and the recovery proceedings initiated against the petitioner and remit the case back to the respondent to pass speaking order within a period of three months from the date of receipt of a copy of this order. The petitioner is directed to file his representation/reply, if any, within a period of one month from the date of receipt of a copy of this order. The respondent shall pass orders on merits after hearing the petitioner".

2. Pursuant to the aforesaid order, the 1st respondent has passed the impugned order. Relevant portion of the said impugned order, reads as under:-

"3. As per the above directions, it is ascertained that the final assessment orders had been passed well before the issuance of the directions of the Hon'ble High Court and however notices have been issued to the first respondent to explain the transaction. On receipt of the notice, th dealer has appeared in person on 22.04.2021 and produced a copy of Form-1 return which is filed by them on 07.12.2016 and Indian Overseas Bank transaction statement from the period 01.04.2015 to 31.03.2016. On verification of the Form-1 filed by the dealer electronically, it reveals that the dealer had declared exempted turnover of Rs.4,49,667/- only.

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4. Further, a Cross check references have been issued to the Assistant Commissioner (ST), Royapuram Assessment Circle as per this Office reference fourth cited, but no reply received from the other end officer till date. However on verification of the department website and verification of other dealers annexure-I with that of sales details of Annexure-II of this dealer revealed that the sales effected to Tvl.Dhanalakshmi Traders, Chennai in 3 invoices to a tune of Rs.39,67,449/- was confirmed and hence, the assessment is revised and re-fixed accordingly as detailed below:-

Details	Turnover (in Rs.)	Rate of Tax	Tax Due (in Rs.)
Sales turnover arrived on verification of other dealers annexure-I with that of dealers annexure-II through department web report and dealers profile data	39,67,449/-	14.5	5,75,280/-
Total	39,67,449/-	14.5	575280

Total and taxable turnover revised and refixed Rs.39,67,449//-

In view of the above, the total and taxable turnover of the dealer for the year 2015-16 is revised and refixed under Section 22(4) of the TNVAT Act, 2006 as detailed below:-

Total and taxble turnover revised and re-fixed for 2015-15..... Rs.39,67,449/- -Rs.39,67,449/- @ 14.5%
Tax due Rs.5,75,280/-
Penalty levied under Section 22(5) of TNVAT Act, 2006:-

It is also proposed to levy a penalty of 150% of the tax assessed under Section 22(5) of TNVAT Act, 2006 for the year 2015-15 as detailed below:-

Penalty levied under Section 22(5) of TNVAT Act, 2006 ... Rs.8,62,920/-.

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			Tax		Penalty u/s.22(5) of the Act
Due	..	Rs.	5,75,280/-	Rs.	8,62,920/-
Paid	..	Rs.	- Nil-	Rs.	- Nil-
Balance	..	Rs.	5,75,280/-	Rs.	8,62,920/-

3. A reading of the impugned order indicates that though notice was issued by the Assistant Commissioner to the petitioner to give details of the alleged sale effected by second respondent, Tvl.Dhanalakshmi, Royapuram, Chennai for a sum of Rs.39,67,449/- during the assessment year 2015-16, no reply was received by the first respondent from the petitioner before passing the impugned order.

4. It is noticed that the Principal Secretary, Commissioner of Commercial Taxes, Chennai has issued Circular No.5 of 2021 LW 10/12521/2016 dated 24.04.2021 to the Assessing Officer to deal with the situation arising out of mismatch between the turnover declared in the returns and the data captured by the department in its Web Portal namely (tnvat.gov.in). Relevant portion of the said circular, reads as under:-

> " 3.3.4 : The Other End Assessing Authority shall verify the details provided to him/her with referene to the manually filed original/revised returns or by issuing show cause notice and calling for the details from the dealer. After the receipt of reply and after due enquiry, the Other End Assessing Authority finds that the seller has reported the transaction and paid the tax due shall report the same to original Assessing Authority and both of them shall drop further proceedings and on the other hand that if the whole or part of the transactions are not reported by the seller, then shall initiate assessment proceedings against the seller and shall pass appropriate orders in accordance with provisions of the TNVAT Act, 2006. The result of such action shall be reported to the Original Assessing Authority."

5. Considering the same, the impugned order dated 14.09.2021 is hereby quashed and the case is remitted back to

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the first respondent to pass appropriate orders on merits within a period of three months from the date of receipt of a copy of this order.

6. This writ petition stands allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

kkd
To

The Deputy State Tax Officer,
Cuddalore Town Assessment Circle,
Sub-Jail Road,
Cuddalore 607 001.

+1cc to the Special Government Pleader Sr.59818

W.P.No.22286 of 2021

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