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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.24805, 24807, 24809 & 24810 of 2021
and
W.M.P.Nos.26089, 26091, 26093 & 26094 of 2021

(Through Video Conferencing)

Tvl.Rajalakshmi Oils,
Represented by its Proprietrix,
Tmt.M.Rajalakshmi,
No.29-A, Alagappa Layout,
Venkatesa Colony,
Pollachi - 642 001. ... Petitioner in all W.Ps

Vs

The Commercial Tax Officer,
Pollachi (West) Assessment Circle,
Pollachi. ... Respondent in all W.Ps

Prayer in W.P.No.24805 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the respondent in TIN:33112240440/2008-2009 dated 08.09.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.24807 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the respondent in TIN:33112240440/2009-2010 dated 08.09.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.24809 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the respondent in TIN:33112240440/2010-2011 dated 08.09.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.24810 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the respondent in TIN:33112240440/2011-2012 dated 08.09.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.



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For Petitioner : Mr.R.Senniappan
(In all W.Ps)

For Respondent : Ms.Amirtha Dinakaran
(In all W.Ps) Government Advocate

COMMON ORDER

Ms.Amirtha Dinakaran, learned Government Advocate takes notice on behalf of the respondent.

2. The petitioner has approached this Court for the third time. Originally an Assessment Order came to be passed which was impugned in W.P.Nos.300 to 303 of 2014. The said Writ Petition was allowed by an order dated 17.04.2014 and thereafter another writ petition was filed in W.P.No.23785 of 2014 which also came to be allowed by an order dated 03.09.2014. The relevant paragraph in W.P.No.23785 of 2014 reads as under:-

"5. In view of the above, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the respondent for a fresh consideration. The respondent shall furnish a copy of the report dated 03.06.2013 within a week of a receipt of a copy of this order. Within two weeks of receipt of a copy of the report, the petitioner shall file their objections to the proposal. Thereafter, the respondent shall give an opportunity of hearing to the petitioner and pass orders afresh. No costs. Consequently, the above MP is closed."

3. Pursuant to the aforesaid order, few communications have been exchanged between the petitioner and the respondent. This is the third attempt of the petitioner.

4. The petitioner by a reply dated 03.10.2017 stated that the order of this Court dated 03.09.2014 in W.P.No.23785 of 2014 has not been complied for more than three years which implied that the respondent had no valid reasons to call the petitioner and it is for the respondent to close the subject matter. However, facts on record indicates that a notice was issued to the petitioner on 22.11.2017 and an opportunity of hearing was fixed on 29.11.2017. On 28.11.2017, the petitioner sent a reply stating that the petitioner has not received the notice. Thereafter, another notice was issued by the respondent on 18.12.2017, to which the petitioner replied by a letter dated 25.12.2017 which reads as under:-

"1. The Honourable High Court of Madras had set aside your impugned orders and asked you to furnish the report to me within one week from receipt of the copy of order of judgement. It is more than three years I have not received any copy of the report. In



the meantime I have stopped doing business and due course the TIN had been closed.

2. I had performed both knee replacement operation and become motionless in home. As you have not furnished report mentioned in judgement from your side to me for more than three years which is ought to be furnished to me within one week from the copy of judgement dated 03.09.2014, this implied me that you have no valid reasons to call for applicant and closed the subject matter. Now raising this issue after limitation is breach of the order of High Court of Chennai. I kindly inform that until I receive the report which the Honourable High Court mentioned I am not in position to raise the objections for personal hearing offered."

5. It is the case of the petitioner that the respondent has now passed impugned order without furnishing the copy of the report which was directed to be furnished by this Court by the second mentioned order in W.P.No.23785 of 2014.

6. It is submitted that the respondent has also not considered any of the submissions of the petitioner in response to the notice and had merely reproduced the objection of the petitioner.

7. Appearing on behalf of the respondent, the learned Government Advocate submits that the writ petition is without merits and the petitioner has an alternate remedy by way of an appeal before the Appellate Commissioner within thirty days from the date of receipt of a copy of this order.

8. That apart, it is submitted that the report called for and directed to be furnished to the petitioner in terms of an order dated 03.09.2014 in W.P.No.23785 of 2014 was not the basis of the impugned order. It is further submitted that the respondent has also not participated effectively in the proceedings and instead merely wanted the respondent to conclude/close the issue.

9. By way of rejoinder, the learned counsel for the petitioner submits that the report directed to be furnished vide order dated 03.09.2014 in W.P.No.23785 of 2014 was furnished after the impugned order was passed and therefore the learned counsel for the petitioner submits that the writ petition deserves to be allowed.

10. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

11. This is the third round of litigation. The petitioner had earlier filed two writ petitions and this is the third writ petition.



12. Though the petitioner is correct in stating that the order dated 03.09.2014 in W.P.No.23785 of 2014 was not fully complied, it is noticed that the order passed by the respondent which is challenged in this writ petition was not based on the aforesaid report which was directed to be furnished. Therefore, the petitioner cannot challenge the impugned order passed by the respondent on merits.

13. That apart, it is noticed that the petitioner was given ample opportunities to furnish reply and appear for the personal hearing. Instead the petitioner merely stated that the report has not been furnished and therefore file should be closed. Such closure of file cannot be allowed.

14. The petitioner did not take advantage of the personal hearing afforded by the respondent. Therefore, the petitioner cannot challenge the impugned order stating that the impugned order is either a non-speaking order or was passed without following the Principles of Natural Justice. Further, what is evident is that the petitioner has scuttled the proceedings by filing frivolous writ petitions twice and this is the third attempt.

15. Considering the same, I do not find any merits in this writ petition and is liable to be dismissed and accordingly this Writ Petition is dismissed.

16. Under these circumstances, the petitioner is given liberty to workout the remedy before the Appellate Commissioner by filing an appeal within a period of thirty days from the date of receipt of a copy of this order. If such an appeal is filed by the petitioner after duly complying with the other provisions of the TNVAT Act, 2006 as far as pre-deposit of tax is concerned, the Appellate Commissioner shall consider the same and pass appropriate orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

17. These Writ Petitions stand disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rgm/arb

Note:

(to return the original copy of the
impugned order to the petitioner to file an
appeal before the Appellate Commissioner)



To

The Commercial Tax Officer,
Pollachi (West) Assessment Circle,
Pollachi.

WEB COPY

Copy to:

The Section Officer,
ER Section,
High Court, Madras.

(To comply with the direction)

+1 cc to Mr.R.Senniappan, Advocate Sr.NO. 60365

+1 cc to Government Pleader Sr.NO. 60474

W.P.Nos.24805, 24807, 24809 & 24810 of 2021
and

W.M.P.Nos.26089, 26091, 26093 & 26094 of 2021

ssd(CO)

A.SK(10.12.2021)