IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27732 of 2021
and
W.M.P.Nos.29311 & 29312 of 2021

(Through Video Conferencing)

Tvl.National Furnitures & Appliances,
Represented by its Partner,
C.A.Tabraze Ahamed,
No.1/4, Madar Sahib Street,
Santhapet, Gudiaytham. ... Petitioner

Vs

1.The Commercial Tax Officer (Main),
Gudiyatham (West), Gudiyatham.

2.The State Tax Officer,
Gudiyatham (West), Gudiyatham.

3.The Branch Manager,
Canara Bank, Gudiyatham Branch,
Gudiyatham Taluk,
Vellore District,
PIN - 632 602.
Tamil Nadu. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the files of the first respondent herein in TIN No.33764343576/2013-2014 dated 28.09.2016 received on 18.10.2016 and consequential recovery notice issued by the second respondent in R.C.No.A3/534/2018 dated 12.11.2021 to the third respondent and quash the same and direct the second respondent to consider the petition dated 26.10.2016 filed under Section 22(6) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.A.N.R.Jayaprathap
Junior Standing Counsel
For Respondents :
For R1 & R2 : Mr.N.R.R.Arun Natarajan
Additional Government Pleader

ORDER

Mr.N.R.R.Arun Natarajan, learned Additional Government Pleader takes notice on behalf of the first and second respondents.

2. The petitioner has approached this Court against the impugned order dated 28.09.2016 received by the petitioner on 18.10.2016 for the Assessment Year 2013-2014 and the consequential recovery notice issued by the second respondent attaching Bank Accounts of the petitioner with the third respondent Bank.

3. It is the case of the petitioner that the petitioner started business in 2013 and was unaware of the requirements of the provisions Tamil Nadu Value Added Tax. The petitioner thus neither charged Value Added Tax nor remitted the tax on the sales effected under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act, 2006) on a bonafide belief that since the purchase and sales turn over is below Rs.10,00,000/-, the petitioner was neither required to pay tax nor filed the returns under the TNVAT Act, 2006.

4. Appearing on behalf of the petitioner, the learned counsel submits that though a notice dated 29.08.2016 preceded passing of the order on 28.09.2016, which was received by the petitioner on 18.10.2016, a petition for revision of the aforesaid order was filed on 26.10.2016 under Section 22(6) of the TNVAT Act, 2006 .

5. The learned Junior Standing Counsel further submits that the petitioner assumed that the respondents had accepted the petition filed under Section 22(6) of the TNVAT Act, and was thus surprised to receive the impugned recovery notice dated 12.11.2021 attaching the Bank Accounts of the petitioner with the third respondent Bank.

6. The learned counsel for the petitioner further submits that the petitioner will be satisfied if the aforesaid petition filed under Section 22(6) of the TNVAT Act is directed to be disposed in accordance with law by the respondents and pending such disposal, the impugned proceedings may be kept in abeyance.

7. Opposing the prayer, the learned Additional Government Pleader for the respondents submits that after the petition was filed on 26.10.2016 under Section 22(6) of the TNVAT Act, four different notices have been issued asking the petitioner to pay disputed tax confirmed vide first mentioned impugned order dated 28.09.2016 and that after receiving the same, the petitioner failed to reply to the same.

8. The learned Additional Government Pleader further submitted that the petitioner ought to have approached this Court at an earlier point of time for a Mandamus or at least sent reminders to the first respondent to pass appropriate orders on the petition filed under Section 22(6) of the TNVAT Act, 2006 on 26.10.2016. He therefore submits that this is not a fit case for interference and prays for dismissal of the writ petition.

9. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the first and second respondents.

10. Though the petitioner has been both negligent in neither filing the returns nor by filing reply to the notices which preceded passing of the first mentioned impugned order dated 28.10.2016 of the first respondent and failed to answer the subsequent notices issued by the first respondent asking the petitioner to pay the arrears of tax, the facts on record also indicates that the petitioner had filed a petition under Section 22(6) of the TNVAT Act, 2006 for revision of the order dated 28.09.2016 in time.

11. Since the aforesaid petition has not been disposed, the impugned recovery cannot be proceeded immediately, as the aforesaid petition of the petitioner for revision of the Assessment Order has not been disposed in accordance with law.

12. Considering the same, this Writ Petition is disposed by directing the second respondent to pass appropriate orders on the petition dated 26.10.2016 of the petitioner filed under Section 22(6) of the TNVAT Act, 2006, within a period of thirty days from the date of receipt of a copy of this order. Needless to state, all recovery proceedings shall be kept in abeyance and will be subject to final outcome of the aforesaid proceedings. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Commercial Tax Officer (Main),
Gudiyatham (West), Gudiyatham.

2.The State Tax Officer,
Gudiyatham (West), Gudiyatham.

3.The Branch Manager,,
Canara Bank, Gudiyatham Branch,
Gudiyatham Taluk,
Vellore District,
PIN - 632 602.
Tamil Nadu.

+1 cc to Spl.Government Pleader Sr.NO. 69884
+1 cc to Mr.A.N.R.Jayaprathap, Advocate Sr.NO.69645

W.P.No.27732 of 2021
and
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PVS(CO)
A.SK(20.01.2022)