IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30847 of 2018
and
W.M.P.No. 36014 of 2018

1. Tvl.Salman Hardwares,
   Rep.by its Proprietor Mr.Abdul Hameed (Deceased),
   No.102, Bazaar Street, Sithalampattu,
   Villupuram - 605 501.

2. Mr.A.Sadik Baksha ... Petitioners

(P2 substituted as LR of deceased sole petitioner vide Order dated 17.04.2021 made in W.M.P.No.5111/2021 in W.P.No.30847/2018 by SMSJ)

Vs.

1. The Assistant Commissioner (CT),
   Villupuram II Assessment Circle,
   C.T.Building's,
   District Collector Office Complex,
   Villupuram - 605 602.

2. The Secretary to Government,
   Commercial Taxes and Registration Department,
   Fort St.George, Chennai.

... Respondents

(R2 suo-moto impleaded, vide Order dated 08.07.2021 in W.P.No.30847/2018 by SMSJ)

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records on the files of the respondent in Na.ka.A3/2018/2015 dated 24.10.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law and direct the respondent to dispose the petition dated 10.11.2018.

For Petitioners : Mr.D.Vijayakumar

For Respondent : Mr.V.Nanmaran
Government Advocate

O R D E R

The Auction Notice issued on 24.10.2018, by the respondent to recover the sales tax arrears to be paid by one Mr.Abdul Hameed, TVL Salman Hardwares, is under challenge in the present writ petition.

2. The writ petitioner was a trader in PVC pipes and electrical goods and registered under the TNVAT Act. The petitioner was carrying on the business having less than 10 lakhs turnover and filed annual returns as per the provisions of TNVAT Act. The petitioner states that he closed his business in the year 2014 itself. Surprisingly, by proceedings dated 24.10.2018 was issued by the respondent to recover the tax arrears from the petitioner for the immovable property. However, the learned counsel for the petitioner states that the property was settled in favour of the legal heirs of the petitioner on 26.07.2011 itself. The petitioner during the relevant point of time was aged about 83 years and due to his old age, he closed down the business in the year 2014 and settled the property in favour of his legal heirs. Thus, there was no intention at that point of time when a settlement deed was executed and impugned auction notice was issued only on 24.10.2018, after a lapse of about 7 years from the date of settlement deed. Thus, the Auction Notice is acceptable and the property do not belongs to the petitioner.

3. The Authorities Competent are expected to initiate action within a reasonable period of time to recover the sales tax arrears in accordance with law and by following the procedures without causing any undue delay. In many such cases, the respondent Department is unnecessarily delaying the matter and paving the way for the assessees too and such a conduct of the officials are to be deprecated. It shows the lethargic attitude in performing the public duties in the department.

4. Every public servant is duty bound to perform his duties vigilantly, prudently and in accordance with the statutes. However, in many such cases of recovery of arrears of sales tax, the Department is not acting vigilantly and prudently and initiating action belatedly, after a lapse of many years, which would provide way for escape from payment of tax or its recovery. Such a blatant dereliction of duty and negligence are to be enquired into by the Competent Authority and all suitable actions are to be initiated against the authorities, who all are liable and accountable for such lapses. Even in cases where there is a long delay in initiating action against the authority responsible, disciplinary actions are to be initiated and recovery of arrears of sales tax is to be made.

5. The Revenue of the State is of paramount importance for the effective and efficient functioning of the Government. Therefore, the dereliction of duty, negligence, delay in initiating action must be construed as serious lapses as far as the recovery of sales tax arrears are concerned and all those officials who are responsible and accountable must be fixed and those arrears of sales tax are to be recovered from those officials by initiating appropriate proceedings for recovery under the Discipline and Appeal Rules and other relevant Rules. Thus, it is not as if the Authorities can make the Revenue of the State to lapse in such a manner, which would have serious repercussions in the matter of implementing the Public Welfare Schemes under the Constitution of India.

6. This Court has seen many number of such cases, where there is long delay in initiation of action for recovery of sales tax arrears. The inactions are sometimes based on collusions and due to corrupt activities. Thus, serious actions are warranted and an enquiry is to be conducted in all these aspects.

7. In the present case, it is a case where the impugned auction notice was issued in order to recover the sales tax arrears which are to be recovered from 2009 - 10, 2010 - 11 and 2012 - 13. The auction notice itself was issued after a lapse of about 5 years. Meanwhile, the petitioner closed down the business and settled the property in favour of his legalheirs. It is an unfortunate situation where the Competent Authorities of the Department are not sensitive enough to understand the importance of State Revenue in implementation of Public Welfare Schemes.

8. In view of the facts and circumstances, this Court is of an opinion that the impugned Auction Notice is improper and cannot be given effect to as the property was settled long back in the year 2014 by the petitioner. Thus, the impugned auction notice issued in proceedings Na.ka.A3/2018/2015 dated 24.10.2018, is quashed.

9. The respondents are directed to initiate appropriate action against all the officials who all responsible and accountable for such delay to recover the arrears of sales tax from the petitioners, the said arrears are to be recovered from the officials against whom such lapses, dereliction of duty and negligence is proved and such an action is to be concluded as expeditiously as possible.

10. In order to implement this order, The Secretary to Government, Commercial Taxes and Registration Department, Fort

St.George, Chennai, is suo-moto impleaded in this writ petition.

11. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Assistant Commissioner (CT),
   Villupuram II Assessment Circle,
   C.T.Building's,
   District Collector Office Complex,
   Villupuram – 605 602.

2. The Secretary to Government,
   Commercial Taxes and Registration Department,
   Fort St.George, Chennai.

+1cc to Mr.d.Vijayakumar, Advocate, S.R.No. 32176

+1cc to the Special Government Pleader, S.R.No.32675

W.P.No.30847 of 2018
and
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RSV(CO)
SU(17/09/2021)