BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.09.2021
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)No.15407 of 2021
and
W.M.P.(MD)No.12318 and 12319 of 2021

M/s. Tajmahal Tobacco Company P. Ltd.,
Represented by its Managing Director;
M.N.A.M. Safiullah. ... Petitioner

-Vs-

1.The Assistant Commissioner,
Office of the Assistant Commissioner of GST &
Central Excise,
Pon Nagar, Medical College Road,
Thanjavur - 613 007.

2.The State Bank of India,
Represented by its Chief Manager,
T.S.No.2664, East Main St.,
Pudukottai - 622 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash impugned order passed by the 1st respondent in TIN:33034103951/2021/A3 dated 26.07.2021 and the consequent bank attachment dated 28.07.2021 of SBI Account bearing No.10909878253 made by the 2nd respondent with respect to the above mentioned account and dispose of the rectification petition dated 20.07.2021 of the petitioner.

For Petitioner : Mr.R.Sivaraman
For Respondents : Mr.D.Ghandiraj
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent in TIN:33034103951/2021/A3 dated 26.07.2021 and the consequent bank attachment dated 28.07.2021 of SBI Account bearing No.10909878253 made by the second respondent with respect to the above mentioned account and dispose of the rectification petition dated 20.07.2021 of the petitioner.

2.It is the case of the petitioner that, as against the petitioner, who is allegedly having tax arrears to the tune of Rs.14,94,150/- for the assessment year 2007-08, Form U notice had been sent by the first respondent to the second respondent bank on 26.07.2021, requesting the second respondent that the amount available in the account of the petitioner can be drawn by way of demand draft in favour of the Assistant Commissioner (Commercial Taxes), Pudukkottai-1 Assessment Circle, that is, the first respondent for adjusting the arrears.

3.Pursuant to the said Form U notice, the second respondent Bank, also having acted upon, by drawing a sum of Rs.8,75,886/- from the account of the petitioner in Account No.10909878253, had credited the same in the account of the first respondent and this fact has been intimated to the petitioner by the communication of the second respondent dated 28.07.2021.

4.In this context, it is the further case of the petitioner that even prior to passing of these two proceedings, the petitioner, on 20.07.2021 had filed a rectification petition under Section 84 of Tamil Nadu Value Added Tax, 2006 [hereinafter referred to as "TNVAT Act" for short] and the said application since had been filed and pending before the first respondent, without deciding the same, as the first respondent has proceeded to recover the amount from the bank account of the petitioner and the same has been acted upon by the bank also, where part of the amount i.e., Rs.8,75,886/- out of the total alleged arrears of tax amount Rs.14,94,150/- has been credited in the account of the first respondent.

5.Mr.R.Sivaraman, learned counsel appearing for the petitioner would submit that, it is unjust and the first respondent ought to have considered the rectification application filed under Section 84 of the TNVAT Act, by the petitioner, which had been admittedly filed on 20.07.2021, that is well before the first respondent's notice passed on 26.07.2021, directing the second respondent bank authorities to draw the amount and credit in the account of the first respondent and therefore, the learned counsel for the petitioner seeks indulgence of this Court that even though the prayer has been sought for challenging the validity of the proceedings dated 26.07.2021, followed by the proceedings issued by the Bank dated 28.07.2021, the learned counsel for the petitioner would submit that the petitioner would be confined with the prayer as of now to issue a simple direction by way of mandamus to the first respondent to consider the rectification petition filed under Section 84 of TNVAT Act dated 20.07.2021 and decide the same, on merits in accordance with law and if any such direction is given, the petitioner would be satisfied for the time being.

6.Heard the learned Government Advocate appearing for the respondents, who would submit that, under Section 84 of the TNVAT Act, if at all any rectification petition is to be filed, it should be filed within five years period and beyond the five years period, if any such application is filed, the same need not be entertained. Therefore, by citing the above, such rectification application, filed under Section 84 of the TNVAT Act, which has been admittedly filed only on 20.07.2021, whereas the assessment year is 2007-08 and order to that effect has been passed on 24.04.2009 for the said assessment year, is beyond the limitation period and therefore, on that ground, this petition is liable to be rejected. Hence, the learned Government Advocate seeks for a dismissal of this writ petition.

7.I have considered the said rival submissions made by the learned counsel appearing for both parties and have perused the materials placed before this court.

8.Insofar as the present prayer for seeking direction to the first respondent to decide the rectification petition filed by the petitioner under Section 84 of TNVAT Act dated 20.07.2021, with regard to the objection raised by the learned Government Advocate pertaining to the limitation is concerned, the learned counsel appearing for the petitioner would contend that, the petitioner along with others had challenged the very provision in writ petitions, which were pending for long years and it was decided on 03.10.2019 and a copy of the order had been served only on 15.07.2021. Only on receipt of the said order, the present rectification petition under Section 84 of TNVAT Act had been filed on 20.07.2021, that is, within a week period and therefore, the time period during the pendency of the earlier proceedings, where the petitioner and others had enjoyed the benefit of stay is to be excluded, in that case, certainly, the present rectification petition filed under 84 of TNVAT Act would come within the purview of five years limitation period. Therefore, it cannot be stated that it is beyond the limitation of five years. Therefore, the application submitted by the petitioner under Section 84 of TNVAT Act can very well be considered, on merits by the first respondent, within the time frame as may be stipulated by this Court, he contented.

9.In view of the said submissions made by the learned counsel appearing for the petitioner, the limitation period of five years has been saved, in view of the pendency of the earlier proceedings, where the petitioner claimed to have enjoyed the stay and ultimately, concluded only on 03.10.2019, where orders have been passed and the copy of the order was served to the petitioner only on 15.07.2021. Therefore, this Court feels that the respondents, that is, the first respondent can very well consider the rectification petition dated 20.07.2021 filed by the petitioner on merits, within a time frame.

10.In that view of the matter, this court inclined to dispose this writ petition on the following order:

> that there shall be a direction to the first respondent to consider the rectification petition filed by the petitioner under Section 84 of TNVAT Act on 20.07.2021, with regard to the assessment year 2007-08 and pass orders thereon, on merits and in accordance with law, ofcourse, after giving

an opportunity of being heard to the petitioner, within a period of eight weeks from the date of receipt of this order.

11.With these directions, this writ petition is disposed of. Till the disposal of the rectification petition as directed above, no further coercive steps shall be taken, pursuant to the alleged arrears of tax for the assessment year 2007-08. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pnm/sm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Assistant Commissioner,
Office of the Assistant Commissioner of GST &
Central Excise, Pon Nagar, Medical College Road,
Thanjavur - 613 007.

2.The Chief Manager,
The State Bank of India,
T.S.No.2664, East Main St.,
Pudukottai - 622 001.

+1 CC to M/s.R.SIVARAMAN, Advocate (SR-27986[F] dated 02/09/2021)

Order made in
W.P.(MD)No.15407 of 2021
Dated:
01.09.2021

SRK(CO)
GC/PM(17.11.2021) 4P 4C