BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.02.2021
CORAM

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P.(MD)No.17552 of 2019
and
W.M.P.(MD)No.14050 of 2019

Tvl.Mayil Agencies,
represented by its Proprietor,
U.Mayilselvam : Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepuak, Chennai - 600 005.

2.The Assistant Commissioner (ST),
Madurai Rural (South) Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai, Madurai - 625 020. : Respondents

PRAYER :- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for records pertaining to the impugned proceedings of the second respondent in TIN.33165163556/2010-11 dated 18.06.2019 and quash the same.

For Petitioner :Mr.B.Rooban for
Raja karthikeyen
For Respondents :Mr.S.Dhayalan
Government Advocate

ORDER

Heard the learned Counsel for the petitioner and the learned Government Advocate appearing for the respondents.

2.The petitioner is a dealer registered with the second respondent. The subject matter pertains to the assessment year 2010-11. It is deemed to have been completed under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 (in short “the Act”), on 13.06.2016. The said assessment was sought to be reopened. The stand of the respondents is that on 11.06.2016, notice under Section 27 of the Act was issued. Since the petitioner did not avail the opportunity, second notice was issued on 13.05.2019. The petitioner gave their reply and not satisfied with same, the impugned order, dated 28.06.2019 came to be filed levying tax and penalty on the petitioner herein. The same is under question in this Writ Petition.

3.The learned Counsel for the petitioner states that the impugned proceedings are clearly barred by limitation. According to him, the petitioner did not receive the alleged notice, dated 11.06.2016. What was received by them was only a notice, dated 13.05.2019. There can be no dispute that if for the first time, notice under Section 27 of the Act was issued on 13.05.2019, it is patently hit by limitation. Only if the respondents can establish that they had initiated proceedings under Section 27 of the Act well within the limitation period, the impugned proceedings can stand and not otherwise.

4.In the reply, dated 20.05.2019, the petitioner had taken a specific defence that they did not receive the notice, dated 11.06.2016. However, in the impugned order, this denial has not at all been dealt with. The impugned order is too cryptic. When the petitioner had taken a specific point regarding limitation, the assessing authority was obliged to go into the said contention. The point regarding limitation has not all been dealt with.

5.Before this Court, a counter affidavit has been filed. The learned Government Advocate would strongly urge that earlier notice was actually served on the Accountant of the petitioner concern on 15.06.2016. In the counter affidavit, there is a change regarding the date. According to the learned Government Advocate, the notice was issued on 13.06.2016. In the impugned order also, while referring to the notice, it is mentioned as 13.06.2016. The learned Counsel for the petitioner would remark that 11.06.2016 happened to be a Saturday and realising the same, the date was changed to 13.06.2016. Coupled with their stand that they never received the notice, it appears quite probable.

6.Neither in the impugned order nor in the present counter affidavit, the respondents have mentioned the name of the so called Accountant, who is said to have received the notice. In the acknowledgement now produced before me by the learned Government Advocate, the seal of the petitioner concern is not affixed. Though now it is claimed that the name of the person, who signed, was one Kumar, nothing prevented the assessing authority from summoning the said Kumar during the enquiry itself and obtaining testimony that he had actually received the notice. I assume that he is a real person and not a fictitious person. There is nothing on record to show that the so called Kumar, who could have been summoned by the assessing authority and deposition taken from him as regards the service of the earlier notice, dated 13.06.2016. He was the petitioner's employee or that he was authorised to receive such communications from the department.

7.Since the impugned order is totally silent and since the counter is also bereft of details, I have to necessarily hold that the notice, dated 13.05.2019 was the first notice issued under

Section 27 of the Act.If the notice, dated 13.05.2019is taken as a starting point for initiation of action under Section 27 of the Act, then it is clearly hit by limitation. Therefore, on these grounds, the impugned notice is quashed and the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepuak, Chennai - 600 005.

2.The Assistant Commissioner (ST),
Madurai Rural (South) Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai, Madurai - 625 020.

+1 CC to M/s.B.ROOBAN, Advocate (SR-6589[F] dated 23/02/2021)

+1 CC to M/s.SPL GP (SR-6686[F] dated 23/02/2021)

W.P.(MD)No.17552 of 2019
22.02.2021

MJ(CO)
KB(12.03.2021) 3P 5C