BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.04.2021
CORAM:
THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**
Writ Petition (MD)No.18445 of 2020
and
W.M.P.(MD).No.15442 of 2020

M/s. Mangalam Stores,
represented by its Proprietor,
H.Bakthavatchalam,
No.8, Anna Salai,
Ponnamaravathy,
Pudukottai District.
... Petitioner

Vs.

The State Tax Officer,
Pudukottai III Assessment Circle,
CT Buildings,
Pudukottai. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the Respondent in TIN No.33434120415/2014-2015, dated 16.11.2020 and quash the same as illegal, arbitrary and against the principles of natural justice and further direct the Respondent to furnish the required documents and thereafter summon the 3rd party viz. Tvl.VSSM Distributors, Pudukkottai whose records are relied on by the Respondent for revising the Assessment and allow the Petitioner to conduct the cross-examination of the 3rd party viz. Tvl.VSSM Distributors, Pudukkottai before proceeding further and thereafter permit the petitioner to file their final objections and grant a personal hearing.

For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.S.Dhayalan
Government Advocate

O R D E R

This writ petition has been filed challenging the order passed by the respondent in TIN No.33434120415/2014-2015, dated 16.11.2020 and to quash the same and further direct the respondent to furnish the required documents and thereafter, summon the 3rd party viz. Tvl.VSSM Distributors, Pudukkottai, whose records are relied on by the respondent for revising the assessment and allow the petitioner to conduct cross-examination of the 3rd party viz. Tvl.VSSM Distributors, Pudukkottai, before proceeding further and thereafter, permit the petitioner to file their final objections and grant a personal hearing.

2. The learned counsel appearing for the petitioner would submit that even though this Court has decided the similar issue in W.P.(MD).No.24847 of 2018, dated 11.12.2018, in the petitioner's own case, for the assessment year 2011 -2012, the respondent, while passing the impugned order has not at all discussed about the required documents and also not offered to cross-examine the seller. He would further submit that the respondent has failed to note that the seller had not appeared for the cross-examination with the records, as directed by the respondent. Hence, the impugned order is liable to be quashed.

3. The learned Government Advocate appearing for the respondent would state that the petitioner was given opportunity to cross-examine the seller. But, in his own admission, he stated that the seller did not appear for cross examination.

4. As per Section 81 of the TN VAT Act, ample power has been given to the respondent to summon the witnesses to appear before them, by following the procedures contemplated under Code of Civil Procedure. Without following the same and without the seller being appeared before them for cross examination, by the petitioner, the respondent has passed the impugned order and the respondent has miserably failed to exercise the said statutory power given to him.

5. In the earlier round of litigation in W.P.(MD).No.24287 of 2018, by an order dated 11.12.2018, this Court has passed the following order:

> "*3.Though the petitioner sought copies of three sets of documents what were made available were only the sale bill copies. The other two records referred to above were not given to the petitioner. Likewise, even though the petitioner wanted to cross examine the other end dealer, the respondent did not cause his production. What was given to the petitioner was only a statement said to have been made by the other end dealer to the assessing authority. It is clearly not sufficient.*
>
> *4. When the petitioner's concluded assessment is sought to be revised on the strength of the returns filed by the other end dealer and the petitioner wants to cross examine the other end dealer also, it is the duty of the assessing officer to make him available. Section 81 of the TNVAT Act, 2006 confers all the powers conferred on a court by the Code of Civil Procedure, 1908, for the purpose of summoning and enforcing the attendance of any person and examining him on oath or affirmation; and compelling the production of any document. Section 81 of the TNVAT Act, 2006 does not merely confer a power. It is coupled with a duty also. In this case, the respondent miserably failed to exercise the said statutory power*

given to him. The assessing officer ought to have done a cross verification with the other end dealer and also made an enquiry with the other end dealer.

5.The respondent did not follow the parameters laid down by the Madras High Court in the decision reported in (2017) 99 VST 343 (Mad). Hence, the order impugned in this writ petition is quashed and the writ petition is allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petition is closed."

6. Admittedly, the seller has not been present before the Court and the petitioner has not taken any steps to summon, as per Section 81 of the TNVAT Act, 2006. Therefore, I am inclined to set aside the order passed by the respondent in TIN No.33434120415/2014-2015, dated 16.11.2020 and remand back the matter to the respondent to pass orders afresh, in accordance with law, by following the procedure contemplated under the Act, to summon the witnesses, so as to enable the petitioner to cross-examine the seller. Accordingly, this Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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
The State Tax Officer,
Pudukottai III Assessment Circle,CT Buildings,Pudukottai.

+1 CC to M/s.K.SOUNDARARAJAN, Advocate (SR-18205[F] dated 30/04/2021)

+1 CC to M/s.GP (SR-18408[F] dated 03/05/2021)

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SMV(CO)
KB(13.05.2021) 3P 4C