BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **20.10.2021**
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.18510 of 2021
and
W.M.P.(MD)Nos.15283 and 15284 of 2021

M/s.S.S.M.Mohamed Ibrabim & Company Private Ltd.,
represented by it's Director,
Mr.M.Mohamed Farooq. ... Petitioner

Vs.

1.The Assistant Commissioner(ST),
Pudukottai-I Circle,
Pudukottai.

2.Axis Bank,
Represented by it's Branch Manager,
East Main Street,
Pudukkottai - 622 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records and to quash impugned order in TIN:33764100106/2021/A3, dated 26.07.2021, and to quash the consequent bank attachment dated 29.07.2021, of Axis account bearing DD.No.044256 made by the second respondent with respect to the above mentioned account and to dispose of the Rectification Petition dated 15.07.2021, of the petitioner.

For Petitioner : Mr.R.Sivaraman

For R1 : Mr.R.Sureshkumar
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records and to quash impugned order in TIN:33764100106/2021/A3, dated 26.07.2021, and to quash the consequent bank attachment dated 29.07.2021, of Axis account bearing DD.No.044256 made by the second respondent with respect to the above mentioned account and to dispose of the Rectification Petition dated 15.07.2021, of the petitioner.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the first respondent.

3.The issue raised in this Writ Petition is covered by an order passed by this Court in W.P.(MD)Nos.18440 and 18446 of 2021 dated 08.10.2021, wherein this Court has passed the following order:

*''**19**.It is a fact remains that the product called 'Chewing Tobacco', admittedly, manufactured by these petitioners from 2006-07 was not at all included as one of the item scheduled in TNVAT Act as a taxable item. Realising this omission or lacuna or with the wisdom of the legislature, Act 30 of 2011 was brought in, under which, the TNVAT Act, 2006 underwent amendment, wherein as per Section 3 of the Amending Act, after Serial No.12 to second schedule Serial No.13 was inserted, where, one of the item in Serial No.(vii)-'Chewing Tobacco' also has been mentioned. Admittedly, the said amendment has come into the effect only from 12.07.2011, therefore, the product 'Chewing Tobacco' has become a taxable item only from 12.07.2011.*

***20**.In this context, it is a definite case of the petitioners that because of the said product, namely, 'Chewing Tobacco', which they manufactured in the year 2007-2008, excess tax had been calculated by the first respondent, as if that, it is a taxable item, however, the fact remains that the product has become a taxable item only from 12.07.2011 and therefore, these apparent mistake available on the face of the record has to be rectified, that is the reason, why they filed the rectification applications, which are admittedly pending before the first respondent.*

***21**.Insofar as the five years limitation as pointed out by the learned Government Advocate is concerned, the five years limitation period is no doubt starts from the order passed by the authorities, which was passed sometime in 2009, however, from October 2011, there has been a stay, which was in operation for all these years up to 03.10.2019, the date on which, those writ petitions were disposed of. Therefore, the period between 15.09.2011, the date on which original interim stay was granted till the disposal of the writ petition, that is, dated 03.10.2019 has to be excluded. If that period is excluded, certainly the present rectification petitions, dated 19.07.2021 and*

15.07.2021, filed by the petitioners would be within the time of the five years limitation period, as contemplated under Section 84 of the TNVAT Act. Therefore, that objection raised by the learned Government Advocate cannot be countenanced.

22.*In that view of the matter, this Court feel that, unless the rectification petitions filed by the petitioners is decided by taking into account the aforesaid factual as well as the legal aspects projected by the petitioners, the first respondent cannot proceed further pursuant to the alleged due for the Assessment Year 2007-2008. In that view of the matter, the impugned orders requiring the bank authorities to recover the amount and to pay it in favour of the first respondent may not be justifiable and accordingly, those orders are liable to be interfered with.*

23.*In the result, the following orders are passed in these writ petitions:*

> *"that the impugned orders are quashed and the matters are remitted back to the first respondent, where the rectification petitions filed by the petitioners, dated 19.07.2021 and 15.07.2021, shall be considered and orders shall be passed. While considering the rectification petitions, the afore-stated legal as well as factual position shall be borne-in-mind and after passing the order in the rectification petitions, depending upon the outcome of the same, the further course of action, if any needed, can be taken by the first respondent in accordance with law." ''*

4.In view of the aforesaid order, where the issue has been decided in the above terms, this Court feels that this Writ Petition can also be disposed of on the same line. Accordingly, this Writ Petition is disposed of with the following order:

> "that the impugned order is quashed and the matter is remitted back to the first respondent, where the rectification petition filed by the petitioner, dated 15.07.2021, shall be considered and orders shall be passed. While considering the rectification petition, the afore-stated legal as well as factual position shall be borne-in-mind and after passing the order in the rectification petition, depending upon the outcome of the

same, the further course of action, if any needed, can be taken by the first respondent in accordance with law."

5.With these observations and directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gbg/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

Assistant Commissioner(ST),
Pudukottai-I Circle,
Pudukottai..

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-32113[F] dated 21/10/2021)

+1 CC to M/s.SPL.GP (SR-32065[F] dated 21/10/2021)

W.P.(MD)No.18510 of 2021
Dated:
20.10.2021

RK/SKN(19/11/2021) 4P 4C