BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P(MD)Nos.3626 and 3627 of 2015
and
M.P.(MD)Nos.1 and 1 of 2015

M.Naseer Ahamed,
Proprietor of M/s.Marble Centre,
Rep. by their Power Agent,
Naina Mohamed. ... Petitioner in both W.Ps

Vs.

The Commercial Tax Officer,
Pattukottai -I Assessment Circle,
Taluk Office Building,
Muthupettai Road,
Pattukottai,
Thanjavur District. ... Respondent in both W.Ps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for records of the respondent in TIN 33834161905/2012-2013 and 2013-2014 dated 13.02.2015 and consequential proceedings in TIN 33894181905/2012-13 and 2013-2014 and quash the same as illegal, arbitrary without jurisdiction.

(in both W.Ps)

For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.S.Dayalan,
Government Advocate

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

2.Though the writ petitions are two in number, the petitioner in both the writ petitions is one and the same. The assessment years pertain to 2012-2013 and 2013-2014.

3.The petitioner is a dealer registered with the respondent. The petitioner had reported total and tax payable turn over by filing monthly returns. The petitioner had also availed input tax credit. Whileso, the respondent issued pre-revision notices stating that the dealers from whom, the petitioner had purchased were actually RC cancelled dealers. In other words, according to the respondent, after the registration of those dealers were cancelled, the petitioner had made his purchase and wrongly claimed input tax credit. Clubbing both the writ petitions together, it can be noted that there are two dealers, namely, Tvl.Vinayaka Tiles Traders and Sri Ganesh Granites. According to the respondent, the registration of Tvl.Vinayaka Tiles Traders was cancelled on 18.03.2012 and that of Sri Ganesh Granites was cancelled on 03.10.2012. The stand of the writ petitioner was that RC of both the traders was cancelled on 17.07.2014. In other words, the stand of the department was that the RC of the dealers was cancelled prior to the transactions between the petitioner and them, while the stand of the petitioner was that the RC was cancelled subsequent to the transactions.

4.When such a contentious issue was raised before the respondent, the respondent ought to have furnished proof as regards the date of cancellation. But without doing so, the stand of the department was reiterated and an adverse order passed on 13.02.2015. Seeking rectification of the same, the petitioner filed petition under Section 84 of the Tamil Nadu Value Added Tax Act, 2006.

5.The petitioner in his rectification petition specifically pleaded that the registration of the dealers was cancelled only on 17.07.2014 and that the same can be evidenced from the department website itself and without verifying same, an adverse order came to be passed. While rejecting the said rectification petition, the impugned order has been passed. The rejection of the petition filed under Section 84 of the Act has been assailed in these writ petitions.

6.The respondents has filed a detailed counter affidavit and the learned Government Advocate took me through the averments set out therein. He drew my attention to paragraph Nos.4 and 5.

7.I carefully considered the rival contentions and went through the materials on record. As rightly contended by the learned counsel for the petitioner, the validity of an official order has to be sustained on the strength of its contents and it cannot be improved later in the form of a counter affidavit. This is a well known legal proposition. Neither in the original order nor in the rectification order, the respondent has bothered to furnish any proof to controvert the stand taken by the petitioner. This is all the more so, because the petitioner while filing the rectification petition has placed solid material in the form of monthly return filed by Tvl.Vinayaka Tiles Traders for the month of August, 2013. If as claimed by the respondent, the registration of Tvl.Vinayaka Tiles Traders was cancelled on 18.03.2012, Tvl.Vinayaka Tiles Traders could not have filed their monthly return in August, 2013 and definitely, the department website could not have reflected the same. Thus, when the petitioner has filed solid materials in support of his claim, the respondent was obliged to meet the same appropriately. That was not done here. Therefore, on this ground, the orders impugned in these writ petitions are quashed and these writ petitions are allowed and the matters are remitted to the file of the respondent to pass orders afresh in accordance with law. The petitioner shall be given personal hearing before passing such orders. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSIII)

// 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 Commercial Tax Officer,
Pattukottai -I Assessment Circle,
Taluk Office Building,
Muthupettai Road,
Pattukottai,
Thanjavur District.

+1 CC to M/s.K.SOUNDARARAJAN, Advocate (SR-6075[F] dated 19/02/2021)

+1 CC to M/s.SPL GP (SR-6167[F] dated 19/02/2021)

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18.02.2021

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