IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.7796 OF 2022
AND
W.M.P.NO.7819 OF 2022

Tvl.Chennai Marine Offshore
& Industrial Supply Co.,
Rep. By its Proprietor,
Mr.Shabbir Hussaini Bhagat,
No.118, Broadway,
Chennai - 108. ... Petitioner

Vs

1. The State Tax Officer,
Muthialpet Assessment Circle,
No.32, Basin Bridge Road,
Chennai - 3.

2. The Branch Manager,
IDBI Bank,
Broadway,
Chennai - 108. ... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records of the 1st respondent proceedings in TIN No:33651241528/2015 - 16 dated 20.01.2022 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr.D.Vijayakumar

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader

O R D E R

The prayer sought herein is for a writ of Certiorari calling for the records of the 1st respondent proceedings in TIN No:33651241528/2015 - 16 dated 20.01.2022 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

2. The petitioner is a dealer under the erstwhile Tamil Nadu Value Added Tax Act, 2006 (in short 'the Act').

3. The proceedings concluded and order of assessment was passed on 20.01.2022, under which, the input tax credit claimed or availed by the petitioner was sought to be reversed.

4. As against the said order, the present writ petition has been filed.

5. When the case came up for hearing on 01.04.2022, it was contended by the learned counsel for the petitioner Mr.D.Vijayakumar that, before issuing the order which is impugned herein, no notice was issued on the petitioner.

6. However, it was submitted by Mr.C.Harsha Raj, learned Additional Government Pleader that, before issuing the impugned order, notice dated 10.01.2020 was served on the petitioner.

7. In order to ascertain this factual position, a direction was given by this Court, pursuant to which, when the case is taken up for hearing today, the learned Additional Government Pleader, on instruction, would submit that, the notice dated 10.01.2020 has been dispatched or sent by the Revenue to the petitioner but not by registered post but only by ordinary post.

8. Since it was only through ordinary post, no acknowledgment could be produced. Therefore, it cannot be presumed that, the notice sent to the petitioner has not reached to the petitioner as normally postal authorities, being the agent of the addressee, could have served the notice to the petitioner.

9. I have considered the said submission made by the learned counsel for the parties and have perused the materials placed before this Court.

10. Even though the notice dated 10.01.2020, prior to the impugned order, is claimed to have been sent by ordinary post, it cannot be simply presumed that, automatically that would have been served on the petitioner when the petitioner stoutly deny such service of notice.

11. Though the post office is the agent of the addressee, when these kind of matters, where, statutory notice is a must to be issued before passing the assessment order as that will have a financial and civil consequences on the noticee, strict compliance is to be expected. Therefore, the notice claimed to have been sent on 10.01.2020 by ordinary post cannot be treated as a proper service of notice in view of the specific denial made in this regard by the petitioner. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

> (i) That the impugned order on the above ground is set aside and the matter is remitted back to the respondent for reconsideration.
>
> (ii) In this process, it is open to the petitioner to treat the impugned order as a notice and therefore, it is open to him to make his reply and input or defence against such notice to the respondent Revenue within a period of Two weeks from the date of receipt of a copy of this order and on receipt of such reply, the respondent Revenue, after considering the same by giving an opportunity of being heard, shall decide the issue and pass final orders thereon.
>
> (iii) Since it is brought to the notice of this Court by the learned counsel appearing for the petitioner that, in the meanwhile, since the Bank account of the petitioner has been attached, he wants some redressal. However, in this regard, it is open to the petitioner to make an application immediately to the Assessing Authority concerned who shall consider it objectively and decide it in view of the aforestated order and such application if it is filed shall be decided and passed an order at the earliest as a preliminary one.

With this direction, this Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The State Tax Officer,
   Muthialpet Assessment Circle,
   No.32, Basin Bridge Road,
   Chennai - 3.

2. The Branch Manager,
   IDBI Bank,
   Broadway,
   Chennai - 108.

+1cc to the Special Government Pleader (Taxes), S.R.No.24092

W.P.NO.7796 OF 2022

SKM(CO)
PBS/19/05/2022