IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.8165, 8168 & 8171 of 2022
and
W.M.P.Nos.8166, 8167 & 8175 of 2022

V.Subramanian ... Petitioner in all WPs

Vs.

1. The Assistant Commissioner(ST),
Avadi Assessment Circle,
No.122, 1st Floor,
Integrated Commercial Tax Building,
Elephant Gate Bridge Road,
Chennai - 600 003.

... 1st Respondents in all WPs

2. The Branch Manager,
ICICI Bank,
No.58/27, RMR Towers,
Transit House Campus,
Ambattur, Chennai - 600 053.

... 2nd Respondent in W.P.No.8165 of 2022

3. The Branch Manager,
Axis Bank,
No.192, Ground Floor,
Karamuthu Nilayam,
Anna Salai, Chennai - 600 002.

... 2nd Respondent in W.P.No.8168 of 2022

4. The Branch Manager,
Axis Bank,
No.199, Nehru Bazzar Road,
Poovai Road, Thiruvallur District,
Anna Salai, Chennai - 600 054.

... 2nd Respondent in W.P.No.8171 of 2022

COMMON PRAYER : Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the Impugned Form U attachment notice dated 16.03.2022 and 22.03.2022 respectively bearing Ref.No.TIN:33071301793/ 2022/A3, issued by the first respondent to the second respondent and quash the same as illegal and further direct the first respondent to release/withdraw the said Form U attachment notice dated 16.03.2022 and 22.03.2022 bearing Ref.No.TIN:33071301793/ 2022/A3, issued by the first respondent to the second respondent with consequential free flow of operation of petitioner current account by the second respondent and further direct the first respondent to consider the rectification petitions, adjudicate them in accordance with law and on merit.

For Petitioner (in all WPs)	:	Mr.M.Mahalingam
For R1 (in all WPs)	:	Mr.V.Prasanth Kiran Government Advocate

COMMON ORDER

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

2. In respect of the assessment years 2007-08, 2008-2009, 2010-2011, 2011-2012, 2012-2013, 2014-2015 and 2015-16, assessment orders have been passed under Section 27 of the TNVAT Act and for 2013-2014 under Central Sales Tax Act, 1956 [in short, 'CST Act']. Those assessment orders have been passed on 22.09.2021 and 01.10.2021 respectively.

3. However, according to the learned counsel appearing for the petitioner/dealer, there was an error apparent on the face of the record in these Assessment Orders, therefore, in order to rectify those errors, the petitioner/assessee had given separate application under Section 84 of the TNVAT Act in respect of each of these Assessment Years i.e., against each of these Assessment Orders by application dated 17.02.2022 and 22.03.2022 respectively. Those applications for rectification though had been filed in respect of these Assessment Years against the Assessment Orders dated 22.09.2021 and 01.10.2021, those applications for rectification still are pending before the Authority concerned without taking any decision.

4. In the mean while, in respect of the bank accounts, the petitioner is having in three separate banks, notice for recovery had been issued by the concerned Bank by communication dated 16.03.2022, whereby the total alleged tax due in respect of these Assessment Years have been mentioned and in order to recover the same, the concerned bank have been directed to recover the money lying in the bank account of the petitioner and pay to the Revenue. Challenging such orders issued by the Assessing Authority to the bankers of the petitioner in three

separate communication dated 16.03.2022, the present writ petitions have been filed with the aforesaid prayer.

5. Heard Mr.M.Mahalingam, learned counsel appearing for the petitioner, who would submit that, as against the assessment orders, applications under Section 84 of the TNVAT Act for rectification since have been filed on 17.02.2022 and 22.03.2022 respectively, which are pending before the Assessing Authority, without taking a decision on the rectification application, the respondent Assessing Authority cannot issue orders directing the bankers of the petitioner for recovery of money. Therefore, on that ground itself the impugned communications are liable to be set aside.

6. Heard Mr.V.Prasanth Kiran, learned Government Advocate appearing for the 1st respondent, who would submit that, the Assessment Orders have been passed in September and October of 2019, as against which, no appeal has been filed, only belatedly in February 2022, these rectification applications under Section 84 of the Act have been filed, prima facie there is no error apparently on the face of the record for rectification, but anyhow those applications would be considered and decided on merits. Merely because the rectification applications have been filed, the recovery proceedings, which is impugned herein through the communication of the bankers of the petitioner for recovering the money cannot be assailed.

7. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

8. As has been rightly pointed out by the learned counsel appearing for the petitioner, a rectification application can be filed within five years from the date of Assessment before any Authority including the Appellate Authority as well as the Tribunal and after such an application for rectification is filed, the same shall be heard and decided by the concerned Authority under Section 84 of the TNVAT Act.

9. Herein, the case in hand, admittedly rectification application in respect of all these assessment years i.e., against the assessment orders, filed sometime in February 2022 itself i.e., on 17.02.2022 and 22.03.2022 respectively and those applications though had been filed and are pending before the Assessing Authority, without deciding the same, now the present impugned communications dated 16.03.2022 and 22.03.2022 have been issued to the bankers of the petitioner for recovery of money, hence, this Court feels that the said recovery proceedings may not be permitted at this juncture unless and until the rectification application of the petitioner is decided on merits by the Revenue.

10. In that view of the matter, this Court is inclined to dispose of all these Writ Petitions with the following orders:

(i) That all these recovery proceedings, which are impugned herein are set aside and the matters are remitted back to the respondent for deciding the rectification application dated 17.02.2022 filed and which are pending before the Assessing Authority under Section 84 of the TANVAT Act and decide the same after giving a fair opportunity of being heard to the petitioner on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

(ii) It is needless to mention that, once the rectification application is decided as stated above, depending upon the outcome of the decision, further course of action can be decided by the Assessing Authority.

11. With these directions, all these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

sp/mp

To

The Assistant Commissioner(ST),
Avadi Assessment Circle,
No.122, 1st Floor,
Integrated Commercial Tax Building,
Elephant Gate Bridge Road,
Chennai – 600 003.

+3ccs to Mr.M.Mahalingam, Advocate, S.R.No.22667
+1cc to the Government Pleader(Taxes), S.R.No.23257

W.P.Nos.8165, 8168 & 8171 of 2022

BP[co]
NSK/22/06/2022