IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022.

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.9019 of 2022
and W.M.P.No.8822 of 2022

Thulasi Commimox
Rep. By its Proprietor
Mr.A.Thennarasu,
No.89, N S K Nagar, Salamedu
Villupuram-605 602. ...Petitioner

-Vs-

The Assistant Commissioner (CT)
Villupuram I Assessment Circle,
Integrated CT Buildings,
Villupuram-605 602. ...Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the impugned proceedings of the Respondent passed in TIN 33514683068/2011-12 dated 31.08.2016 (Certified copy dated 24.02.2022) and consequential distraint order in Form No.I in 1A3/1481/2017 dated 27.01.2022 along with notice of demand prior to attachment of land in Form No.4 issued under Section 25 of Revenue Recovery Act and quash the same as per the law laid down by this Court in W.P.Nos.21741 to 21743 of 2015 vide order dated 20th August 2015.

For Petitioner : Mr.P.V.Ravi Kumar

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the impugned proceedings of the Respondent passed in TIN 33514683068/2011-12, dated 31.08.2016 (Certified copy dated 24.02.2022) and consequential distraint order in Form No.I in 1A3/1481/2017 dated 27.01.2022 along with notice of demand prior to attachment of land in Form No.4 issued under Section 25 of Revenue Recovery Act and quash the same as per the law laid down by this Court in W.P.Nos.21741 to 21743 of 2015 vide order dated 20th August 2015.

2. The petitioner was a dealer under the erstwhile Tamil Nadu Value Added Tax Act, 2006 (in short 'the TNVAT Act). For the period 2011-12, though the assessment was completed under Section 22(2) of the said Act, subsequently the Revenue wanted to scrutinize the same for passing the revised order under Section 22(3) of the Act or order under best judgment basis under Section 22(4) of the Act.

3. In this regard, though it is the case of the Revenue that, notice has been issued to the petitioner dealer and the petitioner dealer has not given any reply, it is the case of the petitioner counsel that, no notice had been served on the petitioner on the permanent address of the petitioner, because in the year 2014 itself, the petitioner closed the business and at the time of closing the business, he had declared so, that his permanent address is something different, not the one where he conducted the business and having taken note of the same, the Revenue also cancelled the registration made under the said Act.

4. Despite these factors, according to the petitioner counsel, the order of assessment under Section 22(4) read with Section 27(1) and 27(2) of the Act since has been passed on 31.08.2016 and the certified copy of the same has been served to the petitioner on 27.01.2022, challenging the same on the ground that, no notice has been served prior to the order and also challenging the consequent distraint proceedings issued in this regard, the petitioner has moved the present writ petition.

5. Heard Mr.P.V.Ravi Kumar, learned counsel for the petitioner, who would submit that, when the business was closed, pursuant to which, the registration itself was cancelled and the permanent address of the petitioner having been revealed, taking note of the same, the Revenue if at all wants to reopen it or to revise it, they could have issued notice to the permanent address of the petitioner, however, no such notice has been issued including the assessment order of the year 2016, only the distraint proceedings, which is also impugned herein, since has been issued to the permanent address of the petitioner, they have challenged both proceedings now, on the ground of violation of principles of natural justice.

6. Heard Mr.C.Harsha Raj, learned Additional Government Pleader appearing for the respondent Revenue, who would submit that, if that is the grievance of the petitioner that, the notice has not been served on the permanent address of the petitioner, because he has closed the business in the year 2014, the same could have been revealed by the petitioner and if that permanent address had been made known to the Revenue, certainly, the notice would have been dispatched to that address also and here in this case, notice though had been sent to the petitioner

to the registered address of the business premises, the same was since not responded, the Revenue had no other option except to proceed with the assessment and accordingly completed the assessment in the year 2016 and that order now is under challenge only after receipt of distraint proceedings, thereby there is a delay and latches on the part of the petitioner in approaching this Court, instead of going before the Appellate Authority, therefore, on that ground, this writ petition is liable to be rejected.

7. I have considered the submissions made by the learned counsel appearing for the parties and have perused the materials placed on record.

8. It is the fact remains that, the petitioner closed the business in the year 2014, pursuant to which, the registration itself was cancelled by the Revenue. At the time of cancellation of registration, the permanent address of the petitioner at Pondicherry seems to have been revealed and to that address only, now the consequential impugned distraint proceedings have been served.

9. When that being served, it can be presumed that, the permanent address of the petitioner is made known to the respondent Revenue, despite that, since notice had not been served on the permanent address, the plea raised by the petitioner side that, no notice have been served on the petitioner or received by them to the known address is to be accepted.

10. When that being so, this Court have no hesitation to hold that, the impugned order of assessment, dated 31.08.2016 and the consequential distraint proceedings issued may not stand in the legal scrutiny and therefore, this Court is inclined to dispose of this Writ Petition with the following order:

- That the impugned orders are set aside and the matter is remitted back to the respondent for reconsideration.
- While reconsidering the same, the impugned assessment order, dated 31.08.2016 shall be treated as a show cause notice by the petitioner and in response to the same, it is open to the petitioner to give the response within a period of two weeks from the date of receipt of a copy of this order and after receipt of such reply, if any personal hearing is sought for by the petitioner in the said reply, the same shall also be given by the Revenue within a period of two weeks thereafter.

- After giving an opportunity of personal hearing, it is open to the Revenue to proceed with the assessment under Section 22(3) and 22(4) as well as Section 27 of the Act on merits.

11. With these observations and directions, this writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Anu/tsvn

To

The Assistant Commissioner (CT)
Villupuram I Assessment Circle,
Integrated CT Buildings,
Villupuram-605 602.

+1cc to Special Government Pleader (Taxes) SR. No. 25824
+1cc to Mr.P.V.Ravi Kumar, Advocate SR. No. 25159

W.P.No. 9019 of 2022

NK (CO)
PR (29/06/2022)