IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NOS.13316 & 13320 OF 2021
AND
WMP.NOS.14140, 14143, 14145 & 14146 OF 2021

[VIDEO CONFERENCING]

W.P.No.13316 of 2021

M/s.Bharath Traders
Rep by its Managing Partner – G.Ramamurthy
No.218- MRK Salai, Indira Nagar
Neyveli – 607 801
Cuddalore District.

....Petitioner

-Vs.-

1. The Commercial Tax Officer
   Panruti (Rural) Circle
   Panruti
   Cuddalore District.

2. The State Tax Officer
   Panruti (Rural) Circle
   Panruti
   Cuddalore District.

3. The Branch Manager
   Indian Bank
   No.12/1, Main Bazaar
   Block 12, Neyveli – 607 803
   Cuddalore District.

4. Assistant Commissioner (CT)
   Thiruverumbur Assessment Circle,
   Trichy.

5. Assistant Commissioner (CT),
   Nandanam Assessment Circle,
   Chennai.

....Respondents

(R4 & R5 suo motu impleaded vide order dated 25.06.2021 made in W.P.No.13316 of 20201 by Hon'ble ASMJ)

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the 2nd Respondent in its impugned proceedings made in TIN:33036251822/2014-2015 dated 08.03.2021 and to quash the same.

W.P.No.13320 of 2021

M/s.Bharath Traders
Rep by its Managing Partner – G.Ramamurthy
No.218- MRK Salai, Indira Nagar
Neyveli – 607 801
Cuddalore District.

....Petitioner

-Vs.-

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5. Assistant Commissioner (CT),
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   Chennai.

....Respondents

(R4 & R5 suo motu impleaded vide order dated 25.06.2021 made in W.P.No.13320 of 2021 by Hon'ble ASMJ)

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the 2nd Respondent in its impugned proceedings made in TIN:33036251822/2014-15 dated 09.09.2016 and the consequential order dated 13.10.2016 and to quash the same.

For Petitioner in both WP's : Mr.S.Rajasekar

For Respondents in both WP's : Mr.N.R.R.Arun Natarajan, Spl.G.P., for R1, R2, R4 & R5

COMMON ORDER

The petitioner has filed these Writ Petitions to quash the impugned proceedings of the second respondent in TIN:33036251822/2014-2015 dated 08.03.2021 seeking to attach the bank account of the petitioner. The petitioner had earlier suffered an assessment order dated 09.09.2016 pursuant to the notice issued to the petitioner on 12.08.2016. By the aforesaid order, the second respondent had confirmed the tax of Rs.8,61,542/- and total penalty of Rs.9,98,385/- under Section 22(5) of Section 27(4)(i) of the TNVAT Act, 2006.

2.The case of the petitioner is that the petitioner is a works contractor and had rendered services to NLC, Cuddalore and BHEL, Trichy and that the respective persons for whom the petitioner had rendered works contract had paid tax under Section 13 of TANVAT Act, 2006 which stands confirmed in the communications which have been filed before this Court.

3.The learned counsel for the petitioner submits that though the petitioner had neither filed a statutory appeal nor an application for rectification under Section 84 of TNVAT Act, 2006, nevertheless, immediately after the order was passed on 09.09.2016, had addressed a letter dated 03.10.2016 to the respondent to rectify the mistake. The learned counsel for the petitioner further submits that thereafter streams of communications were exchanged between the second respondent and the office of the 4th and 5th respondents i.e., jurisdictional Assistant Commissioner (CT) within whose jurisdiction, the principal for whom the petitioner had rendered works contract exists.

4.A specific reference was made to the communication dated 31.05.2019 from the second respondent to the fourth respondent and another communication dated 31.05.2019 from the second respondent to the fifth respondent requesting him to transfer the tax deducted at source under Section 13 by the principal for settling of the tax liability of the petitioner confirmed vide order dated 09.09.2016.

5.Opposing the prayer in these Writ Petitions, the learned Special Government Pleader for the respondents 1, 2, 4 & 5 on instructions submits that the petitioner had not taken any recourse to the remedy prescribed under the Act and therefore, the petitioner cannot pray for interference of the orders passed by the second respondent herein. He therefore, submits that these Writ Petitions are liable to be dismissed.

6.I have considered the submissions advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the respondents 1, 2, 4 & 5.

7.The impugned proceedings attaching the bank account of the petitioner stems from an order dated 09.09.2016 of the second respondent wherein the following taxes and penalty were imposed as detailed below:

Penalty of Rs.851421 being 150% of the tax due of Rs.567614 (difference) is levied under Section 22(5) of the Act.

Penalty of Rs.146964 being 50% of wrong claim of ITC of Rs.293928 excessively & wrongly carried over to 2015-16 is also levied under Section 27(4)(i) of TNVAT Act, 2006.

	TAX	PENALTY u/s 22(5)	PENALTY u/s 27(4)(i)	TOTAL PENALTY
Due	Rs.861542	Rs.851421	Rs.146964	Rs.998385
Paid	0	0	0	0
Balance	Rs.861542	Rs.851421	Rs.146964	Rs.998385

8.The petitioner appears to have rendered works contract to the principal namely, NLC and BHEL. The communications dated 31.05.2019 exchanged between the office of the second respondent and the office of the fourth and fifth respondents confirms that during the same period a sum of Rs.2480/- and Rs.4,25,935/- was deducted as TDS amounting to a total sum of Rs.4,28,415/-, as against the tax liability of Rs.8,61,542/- as confirmed in the order dated 09.09.2016. It appears that the petitioner may not be liable to pay a tax of Rs.4,28,415/- [Rs.4,25,935 + Rs.2,480].

9.The facts also indicate that the petitioner has requested the respondent to review the order, though not in clear terms but requested the respondent to pass appropriate order by communication dated 03.10.2016.

10.Considering the over all facts and circumstances of the case, it emerges that the petitioner can at best be liable to pay a tax of Rs.4,33,127/- [Rs.8,61,542 - Rs.4,28,415].

11.Under these circumstances, the impugned order of attaching the bank account of the petitioner stands quashed subject to the petitioner remitting an amount of Rs.4,33,127/- within a period of 30 days from the date of receipt of a copy of this order. The assessment order which was passed on 09.09.2016 is also set aside and the matter is remitted back to the respondent for de novo consideration of the issue, considering the fact that there is prima facie admission in the communications dated 31.05.2019 exchanged between the office of the second respondent and the fourth and fifth respondents herein. The petitioner has borne the incidence of tax by way of TDS, which was remitted by the principal for whom the petitioner had rendered service.

12.Considering the fact that the dispute pertains to the assessment year 2014-15, this Court directs the second respondent to pass appropriate orders on merits and in accordance with law, after considering the over all circumstances of the case and after getting proper instructions and informations from the office of the fourth and fifth respondents. This exercise shall be carried out by the second respondent within a period of three months from the date of receipt of a copy of this order.

13.The petitioner is at liberty to make appropriate submissions within a period of 30 days from the date of receipt of a copy of this order. It is made clear that all the issues are left open to be canvassed by the petitioner.

14.These Writ Petitions are disposed of with the above observations. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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   Panruti, Cuddalore District.

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4. Assistant Commissioner (CT),
   Nandanam Assessment Circle, Chennai.

+1cc to Mr.R.Hemalatha, Advocate, S.R.No.1202
+1cc to the Special Government Pleader(Taxes), S.R.No.1755

W.P.Nos.13316 & 13320 of 2021

KG(CO)
PM/09/03/2022