IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.16486 of 2021
and W.M.P.No.17453 of 2021

M/s.Sri Karunambigai Industries
Rep.by its Proprietor
G.Ravindran, No.36-B, Cheyyur Road
Avinashi. …. Petitioner

-Vs-

1.The Assistant Commissioner (ST)
Office of the Assistant Commissioner (ST)
Avinashi Assessment Circle
Avinashi.

2.The Branch Manager
State Bank of India
West Car Street, Avinashi. …. Respondents

Prayer : Writ Petition 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 1st respondent in its proceedings in TIN No.33842081977/2015-16/A3 dated 12.04.2021 and quash the order of attachment dated 12.04.2021 passed therein and further direct the 1st respondent to refund a sum of Rs.6,23,500/- to the petitioner being the alleged tax recovered from the 2nd respondent on behalf of the petitioner.

For Petitioner :Mr.B.Raveendran

For Respondents:Mr.Richardson Wilson,
Additional Government Pleader – for R1
Mr.M.L.Ganesh, Standing Counsel – for R2

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in its proceedings in TIN No.33842081977/2015-16/A3 dated 12.04.2021 and quash the order of attachment dated 12.04.2021 passed therein and further direct the 1st respondent to refund a sum of Rs.6,23,500/- to the petitioner being the alleged tax recovered from the 2nd respondent on behalf of the petitioner.

2. The petitioner was a dealer under the erstwhile TNVAT Act (In short 'the Act'). For the Assessment Year 2015-16, covering the period of July, August and September 2015, provisional assessment orders have been passed on 26.10.2015 for the month of July and on 30.10.2015 for the months of August and September 2015.

3. Subsequently, on 12.04.2021 revenue recovery proceedings have been initiated. Accordingly, a communication has been sent by the Revenue to the Branch Manager, State Bank of India ie., the second respondent for attachment and recovery of the tax due from the account of the petitioner and to pay the same to the Revenue. Challenging the said order dated 12.04.2021 ie., the communication from the Revenue to the petitioner, the present writ petition has been filed.

4. Heard Mr.B.Raveendran, learned counsel for the petitioner who pointed out that in Para 4 of the provisional assessment order dated 26.10.2015, the following has been stated.

> " Accordingly, a notice was issued to the dealer on 29.09.2015 by post, inviting objections if any to the proposals, within 15 days of receipt of this notice. The notice was not returned by the postal authorities, which implies that, the dealer had received the notice and duly served on them. But, the dealer had neither filed objections nor filed monthly returns so far. Hence I have no alternate except to confirm the proposals and determine their total and taxable turnover as detailed hereunder."

5. Relying upon this statement made by the Revenue, the learned counsel for the petitioner would further point out that, merely because the notice dated 29.09.2015 has been sent through post, which has not been returned from the postal authorities it was presumed by the Revenue as if that the notice has been served on the dealer. Therefore, on that footing they proceeded to finalize the assessment and that is how the assessment orders have been passed on 26.10.2015 as well as on 30.11.2015, where the only change is the date of the notice on 12.11.2015. Since the notice itself has not been served on the petitioner, the provisional assessment orders are bad in law. Therefore, following the same no recovery proceedings could be made like the one which is impugned herein dated 12.04.2021 and hence the impugned proceedings is infirm and accordingly the learned counsel for the petitioner seeks the indulgence of this Court.

6. However, Mr.Richardson Wilson, learned Additional Government Pleader appearing for the first respondent Revenue would submit that, if at all 26.10.2015 as well as 30.11.2015 assessment orders are passed according to the petitioner without notice being served on the petitioner, on that ground they should have challenged only those orders and not the consequential recovery proceedings dated 12.04.2021. Therefore, the said ground may not be applicable to the present impugned proceedings and accordingly the challenge made to the impugned proceedings shall not stand in the legal scrutiny. Hence, he seeks the dismissal of the writ petition.

7. I have heard the learned counsel appearing for both parties and have perused the materials placed on record.

8. Even though the order dated 26.10.2015 and 30.11.2015 have not been specifically challenged in this writ petition, this Court feels that the very provisional assessment orders referred to above itself seems to have been issued after presuming that the notices sent by the Revenue have reached the petitioner dealer. In this context, it was confronted by the learned Additional Government Pleader that the notices in fact were served on the petitioner and therefore, if at all this Court feels that, a further or one more opportunity may be given to the petitioner that can be decided by this Court, but not based on the alleged reason of not serving the notices.

9. Though such a stand has been taken by the Revenue side, this Court feels that the language used by the Revenue in Para 4 of the order dated 26.10.2015 makes it clear that the Revenue was on the impression that the notices have been served on the petitioner. This could be concluded by reading the following.

> “The notice was not returned by the postal authorities, which implies that, the dealer had received the notice and duly served on them.”

10. Be that as it may. In order to resolve this controversy by giving a proper opportunity to the petitioner to respond and for personal hearing before passing the final orders of assessment for the period covered under these orders, this Court feels that the matter can be remitted back to the respondent for reconsideration.

11. In that view of the matter, this writ petition is disposed of with the following order.

- The impugned demand notice or recovery proceedings dated 12.04.2021 shall be kept in abeyance till a final decision is taken on the reassessment process for which now the matter is remitted back to the first respondent. Therefore, the orders dated 26.10.2015 and 30.11.2015 shall not be acted upon.

- After completing the exercise of reassessment by giving an opportunity of hearing to the petitioner within a period of two weeks or any shorter period by informing the date in this regard, final order shall be passed by the first respondent.

- It is made clear that, once a notice is received pursuant to this order from the Revenue, the petitioner shall appear before the authority for personal hearing on the date fixed by the Revenue without taking any unnecessary adjournment as no further adjournment will be given.

12. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

KST

To

1.The Assistant Commissioner (ST)
Office of the Assistant Commissioner (ST)
Avinashi Assessment Circle
Avinashi.

2.The Branch Manager
State Bank of India
West Car Street, Avinashi.

+1cc to Special Government Pleader SR.No.26636

GSM(CO)
GMY(19/07/2022)