IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **21.12.2022**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.34054 of 2022
&
W.M.P.No.33511 of 2022
in
W.P.No.34054 of 2022

N.L.Traders
Rep. By its Proprietor
B.Nithya
W/o.K.Prakash
Door No.18, Thiru Nagar
East Pandy Road
Villupuram – 605 602 .. Petitioner

Vs.

Assistant Commissioner (ST)
Villupuram-1 ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondent in connection with the impugned order passed in TIN/33514682874/2016 dated 31.05.2018 and quash the same consequently directing the respondent to remove /lift that encumbrances created on the petitioner's property i.e., measuring 7,200 square feet in Plot No.11, situated at survey No.23/18B in Panampattu Village, Villupuram Taluk and District.

For Petitioner : Mr.Krishnasamy Chinnasamy

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader (Taxes)

ORDER

Captioned main writ petition has been filed assailing an 'order dated 31.05.2018 bearing reference TIN/33514682874/2016-17 made by the lone respondent qua 'AY 2016-17' ('said AY' for the sake of convenience)' [hereinafter 'impugned order' for the sake of convenience and clarity].

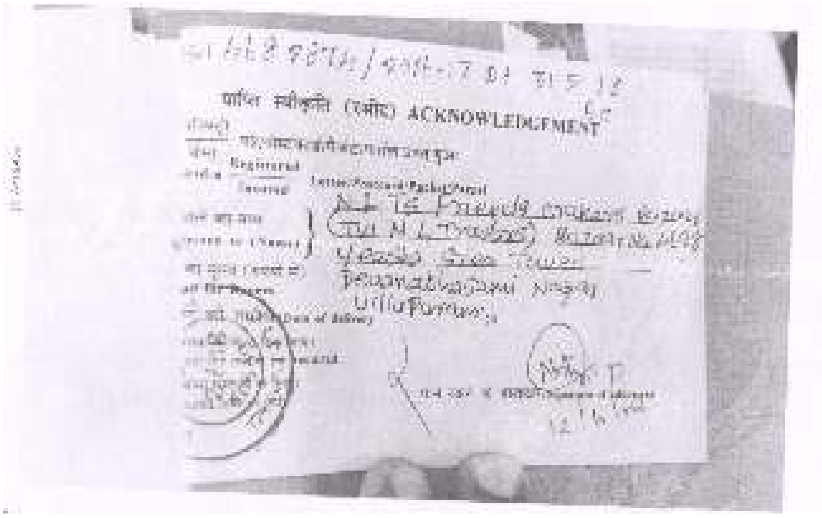
2. Mr.Krishnasamy Chinnasamy, learned counsel for writ petitioner in his campaign against the impugned order submitted that the deponent of the writ affidavit (Mrs.B.Nithya, W/o.J.Prakash) is carrying on business in the name and style 'N.L.Traders' as sole proprietrix; that the line of activity is petroleum and crackers though not articulated in the writ affidavit; that the writ petitioner was visited with an 'auction notice dated 17.10.2020' [hereinafter 'said auction notice' for the sake of brevity, convenience and clarity] for auctioning about three grounds (7200 sq.ft) of land belonging to the writ petitioner; that thereafter writ petitioner sent a representation dated 28.10.2022; that the representation was sent as

according to the writ petitioner she came to know about some proceedings under the erstwhile TNVAT Act from the auction notice; that in response to the representation, the respondent furnished certified copy of the impugned order; that a total sum of Rs.8 lakhs had been paid in the *interregnum*; that the impugned order is being assailed on the ground that the writ petitioner has not been put on pre-revisional notice and has not been given a personal hearing.

3. Mr.C.Harsha Raj, learned Additional Government Pleader (Taxes) accepted notice on behalf of the lone respondent.

4. Owing to the limited perimeter within which the captioned matter perambulates, main writ petition was taken up with the consent of both sides.

5. Responding to the ground on which writ petitioner's campaign against the impugned order is predicated, learned Revenue counsel on instructions produced a photoed photo copy of an acknowledgement card and a scanned reproduction of the same is as follows:


ACKNOWLEDGEMENT

Registered

Letter/Postcard/Packet/Parcel

Date of delivery

6. Adverting to the aforementioned postal acknowledgement card, learned Revenue counsel submitted that the impugned order has been duly served on the writ petitioner in the envelope which pertains to the aforementioned postal acknowledgement card. A careful perusal of the signatures in the writ affidavit, vakalatnama and the aforementioned acknowledgement card reveal that even on a comparison by naked eye, it comes to light that the deponent of the writ affidavit has signed the acknowledgement card. To be noted, a scanned reproduction of one page of writ affidavit and vakalatnama are as follows:

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4. I further humbly submit that I am the Proprietor of N.L.Traders and registered dealer under Tamil Nadu Value Added Tax Act, 2006. I have received Auction Notice vide R.C.No.A3/143/2015 dated 17.10.2022 from Respondent and my property also attached for assessment orders for the period 2011-2012 to 2016-2017 raising a demand for Rs.81,31,883/-(Eighty one lakhs thirty one thousand eight hundred and eighty three). On receiving the notice from the respondent, I have given representation to the above respondent dated 28.10.2022 to stay the auction proceedings.

5. I further humbly submit that no orders of assessment raising demands have been served upon me from the respondent which has mentioned in the auction notice dated 17.10.2022. Subsequently, I came to know that Rs.10,76,000/- [Ten Lakhs Seventy Six Thousand] debited from my husband's bank account without any intimation or notice. I am the sole proprietor of the above traders and the respondent illegally attached my husband bank account and debited Rs.10,76,000.

For N.L. TRADERS,

Nithya. P

Proprietor

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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Under Article 226 of the Constitution of India)
(Special Original Jurisdiction)
W.P.No. 34054 of 2022

N.L.TRADERS
Rep.By.its Proprietor
P.Nithya, F/38 years
W/o J.Prakash,
Door.No.18,Thiru Nagar,
East Pondy Road,
Villupuram- 605 602.

...Petitioner

Versus

ASSISTANT COMMISIONER (ST),
Villupuram - I Assessment Circle,
Villupuram.

...Respondent

VAKALAT

I, P.Nithya, wife of J. Prakash in the above Writ Petition do hereby appoint and retain KRISHNASAMY CHINNASAMY, D.SHARMILA, Advocate of the High Court and defend the same and all proceedings that may be taken in respect of any application connected with the gt same or any order passed therein including all applications for return of documents or receipt to any moneys that may be payable to me in the said Petition and also in appeal under section 15 of Letters Patent and application for leave to the Supreme Court of India and in all applications for review Judgement.

I certify that the contents of this vakkalat at were read out and explained in Tamil in my presence to the executant who appeared perfectly to understand the same and made his signature in my presence

For N.L. TRADERS
Proprietor

ACCEPTED:

Executed before me this 12th Day of December, 2022

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7. Therefore, it is clear that the impugned order has been served on the writ petitioner on 12.06.2018.

8. Though the arguments of the learned counsel for writ petitioner that writ petitioner has not been put on pre-revisional notice and has not been given a personal hearing may merit consideration under normal circumstances, in the light of the impugned order saying that it is a revisional exercise under Section 22(4) of erstwhile TNVAT act, in the case on hand, the remedy is barred. The remedy is barred owing to the limitation having elapsed. Law is well settled that on limitation elapsing, though the right does not get extinguished, the remedy is barred. In the case on hand, the remedy that was available to the writ petitioner by way of an appeal to the Appellate Authority under Section 51 of erstwhile TNVAT Act which provides for a prescribed period of 30 days and a condonable period of 30 days. If computed from 12.06.2018, the prescribed period and the condonable period elapsed on 11.08.2018. Admittedly, the writ petitioner has not preferred any appeal. As writ petitioner has not preferred any appeal, the alternate remedy rule also comes into play but it may not be necessary to go into the same in the light of the ratio laid down by Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada & Others Vs.M/s.Glaxo Smith Kline Consumer Health Care Limited*** reported in ***(2020) 19 SCC 681***. Relevant paragraph is paragraph

19 and the same reads as follows:

*' **19.** We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corpn. of India Ltd. [Electronics Corpn. of India Ltd. v. Union of India, 2018 SCC OnLine Hyd 21 : (2018) 361 ELT 22] , which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) (P) Ltd. v. Union of India [Panoli Intermediate (India) (P) Ltd. v. Union of India, 2015 SCC OnLine Guj 570 : AIR 2015 Guj 97] and also of the Karnataka High Court in Phoenix Plasts Co. v. CCE [Phoenix Plasts Co. v. CCE, 2013 SCC OnLine Kar 10432 : (2013) 298 ELT 481] . The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 2005 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction — by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle*

underlying the dictum of a three-Judge Bench of this Court in ONGC [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose. '

9. As the remedy is barred, though right may not have been extinguished, the campaign of the writ petitioner against the impugned order fails. Consequently, captioned writ petition is dismissed. As a sequitur, captioned WMP is also dismissed. There shall be no order as to costs.

21.12.2022

Index: yes/no
gpa

To

The Assistant Commissioner (ST)
Villupuram Assessment Circle
Villupuram

M.SUNDAR, J.,

gpa

W.P.No.34054 of 2022 &
W.M.P.No.33511 of 2022
in W.P.No.34054 of 2022

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