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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **21.12.2022**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.34031 of 2022
&
W.M.P.No.33493 of 2022
in
W.P.No.34031 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 Assessment Circle
Villupuram ... 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/33514682874/2013-14 dated 06.11.2014 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.

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For Petitioner : Mr.Krishnasamy Chinnasamy

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

O R D E R

Mr.Krishnasamy Chinnasamy, learned counsel for writ petitioner is before this Court.

2. Learned counsel submits that an 'order dated 06.11.2014 bearing reference TIN/33514682874/2013-14 made by the first respondent' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity] has been called in question.

3. Learned counsel for writ petitioner submits that writ petitioner is carrying on business in the name and style of 'N.L.Traders' as sole proprietrix. The writ petitioner has obtained registration as a dealer under erstwhile 'Tamil Nadu Value Added Tax Act, 2006 (Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of brevity].

4. Short facts are that the writ petitioner received an 'auction notice dated 17.10.2022 bearing reference Na.Ka.A3/143/2015'

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[hereinafter 'said auction notice' for the sake of convenience]; that said auction notice was received by writ petitioner on the same date i.e., 17.10.2022; that the writ petitioner came to know that there has been some proceedings under erstwhile TNVAT Act and some order has been passed only on receipt of the said auction notice; that the writ petitioner thereafter made a representation dated 28.10.2022; that the respondent in response to the representation, furnished a certified copy of the impugned order; that in the *interregnum* on 28.10.2022, the writ petitioner had paid a sum of Rs.8 lakhs without prejudice to her rights and contentions; that the said auction notice pertains to auction of an immovable property admeasuring about three grounds belonging to the writ petitioner; that the impugned order is now being assailed on the ground that it has been made without giving notice to the writ petitioner-dealer and without affording an opportunity of personal hearing.

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

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

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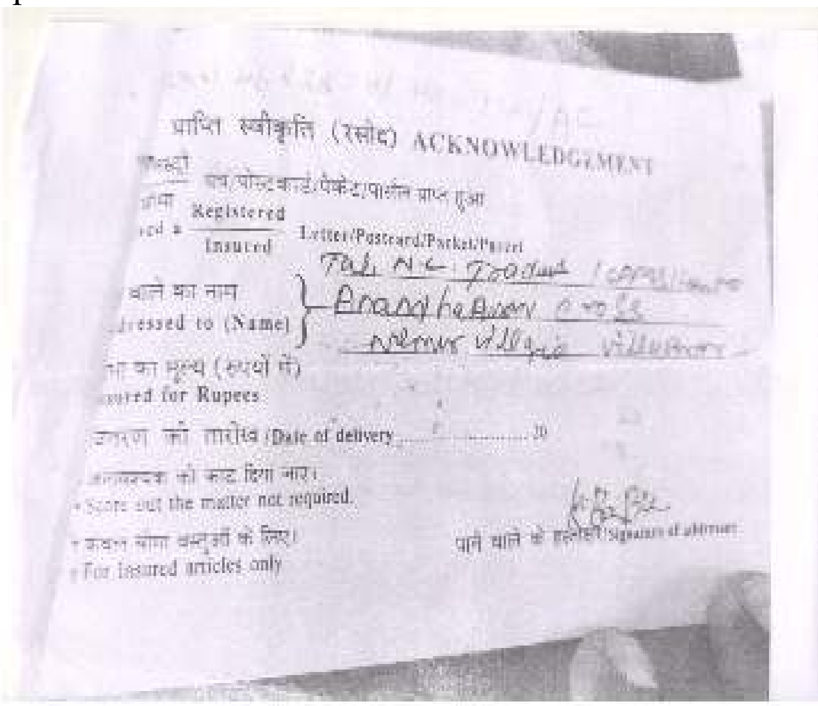
7. Learned Revenue counsel, on instructions places before this Court a photoed photo copy of a postal acknowledgement card and a scanned reproduction of the same is as follows:


ACKNOWLEDGMENT

Registered / Insured Letter/Postcard/Packet/Parcel

Addressed to (Name)

Insured for Rupees

Date of delivery 20

Score out the matter not required.

For Insured articles only

Signature of addressee

8. Learned Revenue counsel, on instructions submits that the above shows that the writ petitioner has been put on notice. To be noted, date qua the acknowledgement card is blank.

9. Be that as it may, the acknowledgement card shows that it has been received by one K.Babu whereas the writ petitioner is one Mrs.B.Nithya, wife of Late K.Prakash carrying on business in the name and style of N.L.Traders as sole Proprietrix. The signatures in the 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.

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For N.L. TRADERS,
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. 34031 **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 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,
Nithya P
Proprietor

ACCEPTED:

Executed before me this 12th Day of December, 2022

MS 6224/2021

MS 3731/2021

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To be noted, sample page from the affidavit and vakalatnama have been scanned and reproduced supra.

10. A comparison of the signatures in the postal acknowledgement card and writ affidavit/vakalatnama reveal even to the naked eye that they are completely different. Therefore, in the considered view of this Court, there is nothing before this Court to demonstrate that the writ petitioner was put on notice before making of the impugned order.

11. There is yet another facet of the matter. A perusal of the impugned order brings to light that it has been made under Section 22(4) of erstwhile TNVAT Act, which means that it is a revision under Section 22(4) of TNVAT Act but the impugned order also says best Judgment method has been adopted. It may not be necessary to delve into this aspect of the matter as this Court in ***State Bank of India officers*** case law, ***[State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner, Chennai-1 in W.P.No.22634 of 2019 order dated 01.08.2019],*** which was confirmed by a Hon'ble Division Bench has held that it is imperative to give a personal hearing whenever there is a legal drill under Section 22(4) of erstwhile TNVAT Act. On a

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demurrer, even if the aforementioned acknowledgement card is taken as prior notice, the impugned order does not say that a personal hearing was afforded. It is settled law that an impugned order cannot be improved by way of a counter affidavit or by production of records, more so in matters of this nature. Therefore, as the impugned order does not say that a personal hearing has been afforded, which is held to be statutorily imperative by this Court in ***State Bank of India officers*** case in a legal drill under Section 22(4) of erstwhile TNVAT Act, this Court is convinced that the impugned order deserves to be set aside on this ground.

12. In the light of the narrative, discussion and dispositive reasoning thus far, the following order is passed:

a) Impugned order is set aside solely on the ground that personal hearing has not been afforded though the impugned order says that it is a legal drill under Section 22(4) of erstwhile TNVAT Act;

b) As a corollary to the previous limb of the operative portion of this order, though obvious for the purpose of specificity, it is made clear that this Court has not expressed any view or opinion on the merits of the matter;

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c) As a consequence of the impugned order being set aside, though said auction notice i.e., auction notice dated 17.10.2022 has not been assailed, the same would perish and this would fit into the 'any other /further or other orders' limb of the prayer;

d) The respondent is directed to do the revisional exercise *de novo* after issuing notice and affording personal hearing to the writ petitioner, complete the *de novo* exercise as expeditiously as the business of the respondent would permit and in any event within six weeks from today i.e., on or before 01.02.2023.

e) As the writ petitioner being put on notice pre-revision/post revision itself is a disputed fact, it is open to both parties to resort to limitation point and the same has to be decided on its own merits and in accordance with law.

Captioned writ petition disposed of with the aforementioned directives. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

21.12.2022

Index: yes/no
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To

The Assistant Commissioner (ST)
Villupuram Assessment Circle
Villupuram

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M.SUNDAR, J.,

gpa

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W.M.P.No.33493 of 2022
in W.P.No.34031 of 2022

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