BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2022

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.5085 of 2012
and
M.P.(MD) No.1 of 2012

K.G. Mills,
Unit of the Kadri Mills (CBE) Ltd.,
Rep. by its Managing Director,
G.Kannappan,
Kariyampalayam, Annur Post,
Coimbatore - 641 653. .. Petitioner

Versus

1.The Assistant Commissioner (CT) II,
Rajapalayam.

2.The Deputy Commissioner (CT),
Coimbatore.

3.Tamilthai Traders,
Cotton Waste Merchants,
62, Vallallar Street, Rajapalayam. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the files of the first respondent herein in his ROC/A3/605/2009, dated 12.12.2011, attested on 12.03.2012 and quash the same.

For Petitioner	:	Mr.N.Inbarajan
For R1 & R2	:	Mr.K.S.Selvaganesan Additional Government Pleader
For R3	:	Given up

ORDER

The petitioner has challenged the impugned proceedings of the first respondent, dated 12.12.2011, attested on 12.03.2012, seeking to recover a sum of Rs.60,27,290/- paid by him to the third respondent between 28.04.2009 and 22.05.2009 after receipt of a notice on 25.04.2009 and further payment to the tune of Rs.76,57,863/- between 28.05.2009 and 30.07.2009 after receipt of the notice on 23.05.2009.

2.The petitioner's Mill is a unit of the Kadri Mills, Coimbatore, and is engaged in manufacturing of Yarn. The petitioner was a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as ''the TNVAT Act''] and the Tamil Nadu General Sales Tax Act, 1959 [hereinafter referred to as ''the TNGST Act]. In the course of its business, the petitioner had purchased cotton from the third respondent.

3.It appears that originally the third respondent had filed return below the taxable limit. The assessment was finalized for the respective Assessment Years 2004-2005 and 2005-2006. At that stage, the first respondent had issued a notice dated 15.04.2009 and asked the petitioner to remit a sum of Rs.2,00,000/- together with Form B-6. It appears that the assessment of the third respondent had been revised on 13.02.2009. However, the petitioner was not made aware of it. During the interregnum, it appears that the amount that was demanded in terms of Form B-6 from the petitioner was attempted to be paid by the third respondent. However, the cheque given by the third respondent was dishonoured. Under these circumstances, a notice was issued by the first respondent on 04.05.2009 calling upon the petitioner to intimate about the amounts that were payable by it to the third respondent. In the said letter, it was informed that the third respondent was in arrears of Rs.79,13,281/- to the Commercial Taxes Department. The petitioner, however, continued to make payment to the third respondent, despite revision order passed on 13.02.2009, whereby it was concluded that the third respondent was in arrears of Rs.79,13,281/- as tax due for the Assessment Years 2004-2005 and 2005-2006. Under these circumstances, the impugned notice dated 12.12.2011, has been issued. The reasons given in the impugned notice read as under:-

> *''You have effected payment to the defaulter dealer at this end to the tune of Rs.6027290/- from the period 28.04.2009 to 22.05.2009, even after receipt of notice on 25.04.2009. And also you have effected payment to the tune of Rs.7657863/- from the period 28.05.2009 to 30.07.2009 even after receipt of this office notice on 23.05.2009. The above notices have been issued only under Section 26 of TNGST Act 1959, in which, it has been stated that, any person who holds money on account of the defaulting dealer should pay the amount to the concerned assessing circle if he received notice relating to amounts of arrears to be paid by the dealer. But you have not acted according to Section 26 of TNGST Act 1959 and it is construed that, you have contravened the provision of Sections 26(1)(ii), (4), (5) of TNGST Act, 1959.*
>
> *Hence, you are requested to pay the amount of arrears due by the defaulter dealer at this end, according to provision of Section 26 of the TNGST Act, 1959.''*

4.The impugned communication and the subsequent reminder dated 12.03.2012, is challenged primarily on the ground that the petitioner was issued with Form B-6 dated 04.05.2009 along with communication dated 15.04.2009, whereby the petitioner was called upon to pay only a sum of Rs.2,00,000/- and to that extent, the petitioner is duty bound to pay the amount. It is submitted that the petitioner is not required to pay any other amount, as he was not put to notice under Section 26 of the TNGST Act read with Rule 18(8) of the Tamil Nadu General Sales Tax Rules, 1959 [hereinafter referred to as ''the TNGST Rules''].

5.Opposing the prayer, the learned Additional Government Pleader for the respondents 1 and 2 submits that despite receipt of notice dated 04.05.2009, wherein it has been clearly intimated to the petitioner that the third respondent was in arrears of Rs.79,13,281/-, the petitioner proceeded to pay a sum of Rs.60,27,290/- for the period between 28.04.2009 and 22.05.2009 and a further sum of Rs.76,57,863/- for the period between 28.05.2009 and 30.07.2009, despite receipt of notice dated 15.04.2009, enclosing a copy of Form B-6, dated 15.04.2009 and a further communication dated 04.05.2009 and therefore, in terms of Section 26 (4) of the TNGST Act, the petitioner is personally liable to pay the assessing authority to the extent of the payment made or to the extent of the liability of the dealer for the amount due under the Act, whichever is less.

6.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 and 2 and perused the affidavit filed in support of the petition, the counter affidavit filed by the respondents 1 and 2, the documents filed in support of the present Writ Petition and the provisions of the TNGST Act and the TNGST Rules.

7.Section 26 of the TNGST Act provides a mode to recover arrears of tax from a defaulting dealer. Under the said provision, the assessing authority can directly call upon the creditor of a defaulting assessee to make direct payment for discharge of the tax liability of the defaulting dealer. Under sub-clause (3), payment by such creditor in compliance with a notice under the above said Section shall be deemed to have made under the authority of the dealer and the receipt of the assessing authority shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount mentioned in the receipt. As per sub-clause (4), any person making any payment to the dealer after receipt of the notice referred to in the said Section, shall be personally liable to the assessing authority to the extent of the payment made or to the extent of the liability of the dealer for the amount due under this Act, whichever is less.

8.In this case, when the original notice dated 15.04.2009, enclosing Form B-6 under Rule 18(8) of the TNGST Rules was issued to the petitioner, the assessment of the third respondent had been earlier revised on 13.02.2009. Curiously, the notice dated 15.04.2009, enclosing a copy of Form B-6 under Rule 18(8) of the TNGST Rules, merely called upon the petitioner to pay/remit a sum of Rs.2,00,000/- towards arrears of tax. It appears that the third respondent had given a cheque for the above said amount, which was dishonoured and therefore, a fresh notice was issued informing the petitioner that the third respondent was in arrears of Rs.79,13,281/- and that the cheque given for Rs.2,00,000/- was dishonoured and therefore, the petitioner should inform the official respondents about the amounts that were due and payable to the third respondent by the petitioner. However, the above said communication dated 04.05.2009, did not accompany a fresh Form B-6 under Rule 18 (8) of the TNGST Rules.

9.Therefore, the question that arises for consideration is whether the notice dated 04.05.2009, was sufficient so as to attract liability under Section 26 (4) of the TNGST Act, 1959, which reads as under:-

> ***''26.Further mode of recovery.-***
>
> *(4) Any person making any payment to the dealer after receipt of the notice referred to in this section shall be personally liable to the assessing authority to the extent of the payment made or to the extent of the liability of the dealer for the amount due under this Act, whichever is less.''*

10.A reading of Section 26 of the TNGST Act makes it clear that the assessing authority may at any time or from time to time, amend or revoke any such notice or extend the time for making any payment in pursuance of the notice. In this case, though in the original notice, the amount was confined for a paltry amount of Rs.2,00,000/-, the facts on record indicate that a subsequent notice was issued on 04.05.2009, which made it amply clear that the third respondent was in arrears of Rs.79,13,281/- to the Commercial Taxes Department towards tax. Despite the same, the petitioner continued to make payment of Rs.76,57,863/- for the period between 28.05.2009 and 30.07.2009 to the third respondent and further sum of Rs.60,27,290/- for the period between 28.04.2009 and 22.05.2009 and thereby, denied the legitimate revenue to the Government. The Commercial Taxes Department was not required to issue a fresh notice in Form B-6 as long as there was a further intimation of arrears of tax due from the third respondent to the Commercial Taxes Department. In this case, there was an intimation of arrears by a notice dated 15.04.2009 of the Commercial Taxes Department. It was incumbent on the part of the petitioner to have obtained proper clarification from the Commercial Taxes Department. Instead, the petitioner continued to make payment to the third respondent.

11.Therefore, there is no merit in the present Writ Petition, as the petitioner has taken a chance to violate Section 26 of the TNGST Act. The petitioner ought to have been cautious while making further payment to the third respondent. The sting under Section 26 (4) stared at the petitioner. Therefore, the petitioner is liable to pay the amount. Liberty is, however, given to the petitioner to recover the amount from the third respondent in accordance with law.

12.This Writ Petition stands dismissed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Assistant Commissioner (CT) II,
Rajapalayam, Virudhunagar District.

2.The Deputy Commissioner (CT),
Coimbatore.

+1 CC to M/s.N.INBARAJAN, Advocate (SR-13295[F] dated 21/03/2022)

+1 CC to M/s.SPL GP (SR-13453[F] dated 22/03/2022)

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SRR(CO)
TR(01.04.2022) 5P 5C