BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.07.2022
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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).Nos.8009 and 8012 of 2021
and
W.M.P(MD).Nos.6107 and 6109 of 2021

W.P(MD)No.8009 of 2021

A.Gunabalan ... Petitioner

Vs.

The State Tax Officer,
Ramanathapuram Assessment Circle,
Ramanathapuram. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the respondent in TIN No.33785440247/2014-2015 and quash the order, dated 19.03.2021 passed against the petitioner as it is unlawful and in gross violation of the principles of natural justice.

For Petitioner : Mr.R.D.Ganesan
For Respondent : Mr.P.Subbaraj
Special Government Pleader

W.P(MD)No.8012 of 2021

A.Gunabalan ... Petitioner

Vs.

The State Tax Officer,
Ramanathapuram Assessment Circle,
Ramanathapuram. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the respondent in TIN No.33785440247/2015-2016 and quash the order, dated 19.03.2021 passed against the petitioner as it is unlawful and in gross violation of the principles of natural justice.

For Petitioner : Mr.R.D.Ganesan
For Respondent : Mr.P.Subbaraj
Special Government Pleader

COMMON ORDER

The primary contention of the petitioner is that from 30.04.2002 he has got nothing to do with Amirtham Oil Company, dealing in kerosene purchased from M/s.Hindustan Petroleum

Corporation Limited. The dissolution of partnership was registered as Document No.37 of 2002. Thereafter, the petitioner has got nothing to do with the partnership business of Amirtham Oil Company. This being so, the petitioner received impugned order, dated 19.03.2021, claiming a demand of Rs.3,99,548/- with interest of Rs.5,83,873/-.

2. The petitioner referred to the notice issued by the respondent, dated 19.12.2019 submits that in the notice there are three noticee, first one is Amirtham Oil Company and second one is petitioner and third one is Shanmugarajan. Immediately, on receipt of the same, the petitioner sent a reply informing the respondent that partnership firm was functioning for 30 years from 1973, the petitioner regularly filing returns. Since the Hindustan Petroleum Corporation directed all its agents to erect tanks and supply kerosene, which would involve further investment, which the petitioner was unable to mobilise. Hence, informed the other partner, namely, Shanmugarajan that petitioner is unable to make investment and he can be relived from the partnership business. Thereafter, the petitioner got relieved from the partnership firm on 30.04.2022, since the petitioner noway concerned with the Amirtham Oil Company business.

3. The petitioner years thereafter received a notice, dated 11.09.2020 from the respondent, the petitioner sent a reply on 04.12.2020. The petitioner received another notice, dated 17.12.2020 showing details of business of Amirtham Oil Company. The petitioner again sent a reply on 24.12.2020, asking for personal hearing so that the petitioner can produce the documents available with him and confirm that after retirement from business he has nothing to do with Amirtham Oil Company and petitioner cannot be fixed with any tax liability. Despite the petitioner's request for personal hearing, the respondent failed to consider the same and passed impugned order on 19.03.2021 along with demand notice. The impugned order passed by the second respondent is bad in law violating principles of natural justice. Hence, the impugned order is liable to be quashed.

4. The learned Special Government Pleader for the respondent submits that the petitioner was carrying on business in the name of Amirtham Oil Company up to the year 2015 as could be seen from the records collected from Hindustan Petroleum Corporation. He further submitted that the petitioner with his partner, namely, Shanmugarajan registered the partnership firm Amirtham Oil Company in Plot No.7, Alli Kanmai East Street, Ramanathapuram, which is the same address where the petitioner was doing business from the year 1973. Now, Amirtham Oil Company obtained a different Tin No.33776493977. The petitioner continues his business with Amirtham Oil Company and his partner, for the purpose of evading payment of tax doubts are created with false particular and now projected as genuine to escape from his tax liability.

5. He further submitted Amirtham Oil Company effected purchases of kerosene from Hindustan Petroleum for the period from December 2014 to March 2016 as per the records of Tvl.Hindustan Petroleum Company Limited, the dealers not filed any returns for claim of exemption from the levy of tax with any valid documents. The revision of assessment was made out based on the doubts available in Department on the strength of the same, show cause notice issued. The statute is clear, the burden of proof is for the dealer to discharge as per Section 17 of the TNVAT Act 2006. The dealer has to satisfy the authority that there is no evasion of tax. Hence, the notice issued and revision of assessment orders passed are according to Act and Rules.

6. He submitted that the dealer can approach this Court only where the order is passed without jurisdiction and in violation of Act and Rules. Further, if the Assessing Authority violated the principles of natural justice, writ jurisdiction of this Court can be invoked. The petitioner pleadings based on factual issues, these factual issues can be decided by the appellate authority who can analyze the issue in detail with records and evidence. Hence, the petitioner to approach the appellate authority under Section 51 of the Act.

(*)7. Considering the submission and perusal of the materials, there is reference to the petitioner's letter in the impugned order, which is not in dispute, the petitioner’s attitude of projecting himself as partner and thereafter the petitioner continued his business with the same partnership with different tin number is the matter of concern. It is for the respondent to enquire all these aspects and pass orders afresh by considering the subsequent developments. The impugned order is hereby set aside. The petitioner is directed to appear before the respondent along with the required documents within a period of twenty days from the date of receipt of copy of this order. The respondent is directed to complete his enquiry assessment within a period of two months thereafter.

8. With the above direction, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

(*)Corrected as per the order of this Court dated 04.08.2022 made in WP(MD) Nos.8009 and 8012 of 2021.

// True Copy //

/08/2022

Sub Assistant Registrar(CS)

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To

To be substituted to the order

The State Tax Officer,
Ramanathapuram Assessment Circle,
Ramanathapuram.

+2 CC to M/s.R.D.GANESAN, Advocate (SR-34155[F] dated 27/07/2022)

+1 CC to M/s.SPL.GP (SR-34401[F] dated 28/07/2022)

+2 CC to M/s.R.D.GANESAN, Advocate (SR-35763[F] dated 04/08/2022)

W.P(MD).Nos.8009 and 8012 of 2021
27.07.2022

SS/16/08/2022/ 4P 7C