BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.8333 of 2022
and
W.M.P.(MD) Nos.6188 to 6190 of 2022

P.Krishnamoorthi ... Petitioner

Vs.

1.The Assistant Commissioner (ST)-3,
Virudhunagar -3 Assessment Circle,
C.T.Building,
Virudhunagar 626 001.

2.The Branch Manager,
Thiruthangal Branch,
State Bank of India,
Thiruthangal 626 130,
Virudhunagar District. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the 1st respondent in RoC.No.A1/603/2021 dated 25.03.2022 and consequential Impugned Order of the 2nd respondent dated 04.04.2022 and quash the same as illegal and arbitrary and consequently direct the 1st respondent to return back Rs.1,27,42,010/- (Which includes the Penal interest amount of Rs.72,18,039/-) to the credit of the Petitioner's Bank Account kept in the 2nd Respondent bank with accrued interest.

For Petitioner : Mr.A.Kannan
For R1 : Mr.S.Kameswaran
Government Advocate
For R2 : Mr.C.Karthik

ORDER

Challenging the order passed by the 1st respondent in Roc.No.A1/603/2021 dated 25.03.2022 and the consequential order of the 2nd respondent dated 04.04.2022 and for a direction to the 1st respondent to return back a sum of Rs.1,27,42,010/-, which includes the penal interest amount of Rs.72,18,039/-, to the credit of the petitioner's bank account with accrued interest, this writ petition has been filed.

2.The erstwhile Thiruthangal Municipality was merged with the Sivakasi Municipality, as per the Sivakasi City Municipal Corporation Ordinance, 2021 (Tamil Nadu Ordinance 3 of 2021) from 21.10.2021 onwards and thereafter, the Sivakasi Municipality had been conducting the business. The local body election to the Municipal Corporation Ward was announced on 26.01.2022. But the ward member election result was declared on 22.02.2022. The election to the Corporation Mayor, Deputy Mayor and other administrative Committees to the newly formed Sivakasi City Municipal Corporation was completed on 31.03.2022.

3.On 15.03.2022, the petitioner received a notice from the 1st respondent in letter No.A1/603/2021 giving personal hearing opportunity with regard to the non-payment of TDS deduction from the civil contractors for the period commencing from 2010-2011 to 2016-2017. The complaint is for non-payment and for non-filing of any declaration form for TDS deduction. Hence, the objections were called for along with documentary proof from the Thiruthangal Municipality. The petitioner was surprised to receive such notice, wherein, he was directed to appear before the 1st respondent on 21.03.2022.

4.The petitioner was busy in the local body election, which was conducted under the directions of the State Election Commission. Thereafter, the petitioner and the staff appeared before the 1st respondent and made objections stating that the alleged non-payment has been kept pending for more than 12 years, for which now penal interest is also contemplated to be levied. The petitioner pointed out that earlier there was payment of Rs.25,96,954/-, which has been paid as follows:-

"***Date***	***amount***
04.04.2017	*Rs.9,29,000/-*
08.05.2018	*Rs.10,00,000/-*
24.07.2018	*Rs.6,67,954/-"*

5.For the payment of the balance amount ie., Rs.26,27,017/-, further time was requested. The penal interest of Rs.72,18,039/- was asked to be waived, considering the fact that the petitioner is an arm of the Government. Due to the taking over of the Thiruthangal Municipality by the petitioner, they have to verify as to whether what are the payments to be made and whether the amount has been debited from the accounts of the contractors available in the erstwhile Thiruthangal Municipality. Considering the petitioner's request, the petitioner's Municipality was facing the authorities. The 1st respondent, by proceedings dated 28.03.2022 in Na.Ka.No.1658/2022/e1, agreed to waive and to receive a sum of Rs.5,21,629/- and the same has also been received by him towards tax balance.

6.This being so, to the shock and surprise, the 1st respondent by proceedings in ROC.No.A1/603/2021, dated 25.03.2022, directed the 2nd respondent to remit the amount of Rs.1,27,42,010/- immediately, which is lying in the account of the petitioner, as per Section 45 of the TNVAT Act, 2006. The 2nd respondent by his communication dated 04.04.2022 informed the petitioner that the amount of Rs.1,27,42,010/- has been debited from the petitioner's account on 31.03.2022.

7.The contention of the petitioner is that the petitioner being an arm of the Government cannot be penalized for the mistake committed by the erstwhile Thiruthangal Municipality. Further, the Municipality made a representation to the 1st respondent stating that no account details are available and the record goes back to the year 2010-2011 to 2016-2017. At that time, the petitioner had taken over the Thiruthangal Municipality. Despite asking for the particulars, the 1st respondent failed to coercive the same.

8.In support of his contention, the petitioner relied on the judgment of the Jharkhand High Court in the case of ***R.K.Transport Private Limited Vs. Union of India and another*** reported in ***(2022) 99 GSTR 315 (Jharkhand)*** and the judgment of this Court in the case of ***Tvl.Victus Dyeings, represented by its partner, Vs. Assistant Commissioner (ST), Rural Assessment Circle, Tirupur*** reported in ***2020 (1) CWC 391***, wherein, for the proposition that any demand to be made under Section 27(1)(a) of the TNVAT Act, 2006 is within the period for 6 years, beyond that no revised assessment cannot be raised thereafter. Hence, he prayed for quashing of the impugned order and the consequential direction to the 1st respondent to return back Rs.1,27,42,010/- to the credit of his account.

9.The 1st respondent had filed a counter stating that the erstwhile Thiruthangal Municipality was merged with Sivakasi City Municipal Corporation. During the years 2013 to 2018, many contracts were awarded and recovered TDS amount of tax to the tune of Rs.55,23,971/-. While settling the bills to the contractors, they had recovered TDS amount to the tune of Rs.55,23,971/-. Though the erstwhile Thiruthangal Municipality recovered TDS amount, they have not paid the recovered amount of tax to the concerned Department, as required by Section 13 of the TNVAT Act, 2006. The Thiruthangal Municipality had kept the amount for years together and slept over on the payment of tax either deliberately or wantonly.

10.On knowing that the local fund audit of Local Fund Audit Department has raised audit objection during the course of local fund audit objection about the amount payable as on 31.03.2020 to the Commercial Taxes Department after a protracted correspondence, the Department initiated action and issued notices directing the erstwhile Thiruthangal Municipality and the Commissioner of Sivakasi Municipal Corporation to pay the deducted TDS amount, otherwise they have to face the consequences. To the petitioner's notice, personal hearing was provided. But none of the action evoked any action or response. The details of notice and personal hearings provided to the Commissioner of Sivakasi Corporation is as follows:-

Sl.No.	Date of Notice	Nature of Notice	To Whom	Response of Commissioner
1	ROC.A1.603/2021 dated 28.07.2021	Addressed to pay the TDS amount by RPAD received on 30.07.2021	Commissioner, Thiruthangal Municipality	No response from the local Municipal authority
2	Notice in A1.603/2021 dated 17.08.2021	Directed to pay the TDS amount in letter by RPAD received on 21.08.2021	Commissioner, Thiruthangal Municipality	No response from the local Municipal authority
3	Notice in A1.603/2021 dated 17.08.2021	Notice sent by RPAD on 19.08.2021 to pay the TDS amount received on 21.08.2021	Commissioner, Thiruthangal Municipality	No response from the local Municipal authority
4	A1.603/2021 dated: 08.11.2021	Personal hearing was provided and notice sent by RPAD on 10.11.2021 received on 11.11.2021	Commissioner, Thiruthangal Municipality	No Response
5	A1.603/2021 dated 12.01.2022	Instructed to pay the TDS and copy also marked to Sivakasi Corporation	Commissioner, Thiruthangal Municipality and Commissioner of Sivakasi Corporation	No Response
6	A1.603/2021 dated 09.02.2022	Addressed to Corporation Commissioner, Sivakasi for pay the TDS amount by RPAD on 09.02.2022 received on 11.02.2022	Commissioner, Sivakasi Municipal Corporation	No Response

7	*A1.603/2021 dated 23.02.2022*	*A1/603/2021-Pre assessment notice by RPAD received on 25.02.2022*	*Commissioner, Sivakasi Municipal Corporation*	*No Response*
8	*A1.603/2021 dated 11.03.2022*	*A1/603/2021- Date: 11.03.2022- by RPAD Personal hearing received on 16.03.2022*	*Commissioner, Sivakasi Municipal Corporation filed reply on 21.03.2022*	*Replied that Rs. 25,96,954/- paid which not considered in the notice. Reported amount of Rs.25,96,954/- were paid in 2018-2019. The amount of Rs. 55,23,971/- is pending as on 31.03.2020. So the amount mentioned in the reply is wrong connotation and misconstruction of payment.*

11.Referring the said tabulation, it is submitted that though the petitioner after taking over the Thiruthangal Municipality was informed about the notices issued, he failed to response. Finally, a reply was sent on 16.03.2022 informing that the amount of Rs.25,96,954/- has been paid and the amount of Rs.55,23,971/- is also pending as on 31.03.2020. Thereafter, interest has been calculated for the period from 2013-2014 to 2017-2018 and the petitioner was due in total for a sum of Rs.1,27,42,010/- and the recovery has also been initiated under Section 45 of the TNVAT Act, 2006.

12.The contention of the petitioner is false and misrepresentation. The payment of Rs.25,96,954/- is nothing to do with the action and recovery through attachment of bank account as the TDS amount of Rs.55,23,971/- is pending as on 31.03.2020, on which the recovery action are taken under Section 45 of TNVAT Act, 2006. The petitioner, if at all aggrieved, has to file an appeal or revision before the Deputy Commissioner under Section 51 of the TNVAT Act, 2006 within a period of 30 days, which is extendable by another 30 days.

13.The learned counsel for the 2nd respondent would submit that the 1st respondent issued a communication in Roc.No.A1/603/2021 dated 25.03.2022 informing that TDS amount and the interest thereon pending for the Thiruthangal Municipality was to the tune of Rs.1,27,42,010/-. The Bank had sent e-mail dated 23.03.2022 and the letter dated 28.03.2022. Thereafter, the Bank acted upon and debited the amount due from the account of the petitioner. The decision of the Bank is not an unilateral decision. They have only followed the statutory obligation as mandated by the law. Though the Municipality had returned the letters to the Bank, they have not informed about any legal impediment to debit the due amount. Hence, the bank debited the amount and credited the same to the 1st respondent.

14.The primary contention of the petitioner is that the petitioner's dues is for the years from 2010-2011 to 2016-2017 for the TDS payment to the contractors and in the year 2021, the Thiruthangal Municipality was merged with the petitioner's Municipality. Hence, he cannot be countenanced once the Municipality takes over the other Municipality with all such liabilities. The TDS amount are deducted while settling the bills to the contractors. If there is any contradiction, it is for the Municipal Authority to recover from the contractors. For that they cannot deny to tax dues to be paid to the 1st respondent. If at all the petitioner is aggrieved with regard to the non-details of the particulars and for any other defence, the petitioner ought to have raised objections to the adjudicating authority by writing a letter. He cannot blame the Municipality and escape from the tax liabilities. The bankers had acted as per the direction of the 1st respondent by following the rules and nothing more. Further, the judgments relied on by the petitioner are not relevant to the facts and circumstances of the present case.

15.In view of the above, this Court finds no merit in the petitioner's contention. Considering the fact that the petitioner is only an arm of the executive Government, the penal interest and other aspects can be considered liberally by the appellate authority, namely the Deputy Commissioner. While approaching this Court directly, limitation is lapsed. Hence, this Court condoning the delay directs the petitioner to file an appeal before the Deputy Commissioner within a period of 30 days from the date of receipt of a copy of this order. The Deputy Commissioner concerned shall entertain the appeal on its own merits and in accordance with law without raising any objections with regard to limitation.

16.With the aforesaid direction, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No **22.08.2022**
Internet : Yes/ No
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To

The Assistant Commissioner (ST)-3,
Virudhunagar -3 Assessment Circle,
C.T.Building,
Virudhunagar 626 001.

https://www.mhc.tn.gov.in/judis

M.NIRMAL KUMAR, J.

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W.P(MD).No.8333 of 2022

22.08.2022