BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.12323 of 2022
and
W.M.P(MD).Nos.8755 and 8758 of 2022

Tvl.VR.V.Palaniappa Hardwares,
Represented by its Proprietor,
Veera.Vellaisamy ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The State Tax Officer,
Karaikudi Assessment Circle,
Commercial Tax Office,
No.50/52, Jawahar Street,
Karaikudi-630 001. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned demand notice of the second respondent in TIN: 33965482634/2007-2008 to 2015-2016 dated 25.08.2021 and quash the same.

For Petitioner : Mr.B.Rooban
For Respondent : Mr.S.Kameswaran
Government Advocate

ORDER

The petitioner filed this writ petition to quash the impugned demand notice of the second respondent in TIN:33965482634/2007-2008 to 2015-2016, dated 25.08.2021.

2. The contention of the petitioner is that the demand notice issued by the second respondent is in gross violation of principles of natural justice. The petitioner earlier filed W.P(MD).Nos.18777 to 18785 of 2017 challenging the assessment orders, dated 11.07.2017. This Court by order, dated 16.03.2021 finds that no personal hearing was given to the assessee/petitioner and directed

the petitioner to appear before the second respondent, therein on 08.04.2021 at 11.00 a.m., without awaiting for any further notice for personal hearing. Thereafter, the petitioner filed his objections and also produced all the relevant records. With the above direction, the earlier assessment orders stand quashed.

3. The petitioner fairly submits that on 08.04.2021, he was unable to appear and thereafter, he sent an objection by post on 27.04.2021. Thereafter, without hearing the petitioner, confirming the earlier assessment order, the above demand notice was issued. He made specific request with regard to certain invoices including purchase invoices and sale invoices, details of movements of goods, delivery details, receipt of payment settlement of payment details etc., despite the same, the second respondent without giving personal hearing and not considering the petitioner’s objections, confirming the earlier assessment order is not proper. Hence, the writ petition.

4. The learned Government Advocate for the respondents submits that the petitioner approached this Court in W.P(MD).Nos.18777 to 18785 of 2017 for the assessment year 2007-2008 to 2015-2016. The petitioner by giving one reason or other delaying confirmation of the demand and successfully evading the payment of tax. In the earlier order of this Court, dated 16.03.2021, a specific direction was given to the petitioner to appear before the second respondent therein on 08.04.2021 but the petitioner failed to appear. Thereafter, with delay, he sent an objection by post, dated 27.04.2021. The second respondent received objection of the petitioner on 05.05.2021. Thereafter, notice was issued to the petitioner for payment of arrears of tax and penalty was imposed to the tune of Rs.58,23,331/- and informed that coercive action will be taken as per the provisions of TNVAT Act and as per the provisions of RR Act, 1864. The respondent based on the records, documents collected and statements recorded, verification of the available documents, the assessment order passed following the provisions. Further, in the demand notice, dated 25.08.2021, the petitioner was given time to pay the arrears from the date of receipt of notice but failed to do.

5. Considering the submission and perusal of the materials, it is seen that the documents submitted by the petitioner found to be not proper. Hence, audit was conducted, statements were recorded and documents collected and thereafter assessment orders passed. The petitioner earlier filed W.P.(MD).Nos.18777 to 18785 of 2017, this Court considered the petitioner's submission and finding some of the copies asked by the petitioner was not furnished and personal hearing not given, directed the petitioner to appear on 08.04.2021 without awaiting for further notice to make his objections. Thereafter, orders to be passed. The petitioner failed to appear for personal hearing on the appointed day.

6. The second respondent sent a notice that coercive action will be taken. Thereafter, the petitioner sent a letter, dated 27.04.2021, which was received in the office of the second respondent on 05.05.2021, with an inordinate delay. The petitioner is unable to produce any documents to show that the letter, dated 27.04.2021 despatched immediately from the receipt produced for one of the letter. It is seen that the letter despatched only on 04.05.2021. Further, in the letter, dated 27.04.2021, the petitioner had requested to provide copies of the invoices including details of movements of goods, delivery details of receipt of payment, settlement of payment details etc. This case is on the scrutiny of the accounts, which the petitioner earlier filed. The entire discrepancies were verified with all the web reports and as per the statement given by the petitioner on 21.09.2015 the documents scrutinized. Further, entire burden is shifted to the dealers under Section 17 of the Act, since the data provided by him and it is his responsibility to contact the parties since he only know such persons and only his bank accounts and other records would disclose his payment details, in such circumstances, the plea of the petitioner is unreasonable and was only evasive, tactics adopted by the petitioner.

7. In such circumstances, the petitioner's request was rejected, finding no fresh grounds for re-assessment of the earlier orders passed in the year 2017. The demand notice was issued on 25.08.2021. Therefore, this Court finds that this writ petition has no merits. Hence, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The State Tax Officer,
Karaikudi Assessment Circle,
Commercial Tax Office,
No.50/52, Jawahar Street,
Karaikudi-630 001.

+1 CC to M/s.B. ROOBAN, Advocate (SR-27372[F] dated 22/06/2022)

+1 CC to M/s.SPL.GP (SR-27168[F] dated 21/06/2022)

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20.06.2022

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