BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2022

CORAM

**THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

W.P(MD).No.12805 of 2022
and
W.M.P.(MD).Nos.9087, 9088 and 9089 of 2022

T.V.Arun Ram ... Petitioner

**Vs.**

1.The Deputy Commissioner, (Sales Tax)
Office of the Deputy Commissioner (Sales Tax),
Tirunelveli,
Tamil Nadu.

2.The State Tax Officer (Inspection),
Office of the Deputy Commissioner (Sales Tax) (INSPECTION),
Tirunelveli,
Tamil Nadu.

3.The Manager,
Canara Bank,
No.VIII-9-103D, Main Road, Robin Building,
Karunkal, Vilavancode Taluk,
Kanyakumari District. ... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records and quash the impugned communication of the second respondent to the third respondent dated 03.06.2022 in Na.Ka.A8/1944/2021 and consequently direct the third respondent to release the sanctioned loan to the petitioner N.C.N Traders, Thickanamcode for the purpose of commencing a margin free market at Thickanamcode.

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| For Petitioner | : | M/s.L.Victoria Gowri |
| For R-1 and R-2 | : | Mr.P.Subbaraj,<br>Special Government Pleader. |
| For R-3 | : | Mr.P.Pethu Rajesh |

**ORDER**

The petitioner is the managing partner of N.C.N. Traders had applied business loan from the third respondent. On the verge of disbursal of the loan, on the objections of the first and second respondents, the loan have not been granted, for the reasons that there is arrears of tax by the petitioner's father and a communication has been sent by the second respondent to the third respondent in Na.Ka.A8/1944/2021 dated 03.06.2022, prayed for quashing the same and to pass positive orders to release the sanctioned loan, this Writ Petition has been filed.

2. The contention of the petitioner is that the petitioner's father Thiagarajan is the proprietor of one Tvl.N.C.N.T.V. Arunram Industries, Thickanamcode, Kanyakumari District. He is doing the business from the

year 2012. It is the partnership firm and the business was carried out in the name of NCN Gold along with the petitioner. Thereafter, on 03.10.2017, the partnership carried in the name of N.C.N Gold was changed to N.C.N Traders for further expansion of their business in other fields. On 04.03.2021, a supplemental deed of partnership was executed in which the petitioner's mother C.Vimala was included as a partner. Further on 06.03.2021, the petitioner's father Thiagarajan retired from the partnership firm and thereafter his mother Vimala taken over as working partner. This being so, on 05.04.2021, a show cause notice was served in the name of Thiagarajan and on his inward supplier Regin Agency by the second respondent in his proceedings Reference No.TVL.045/20210111 under Section 73(5)/Section 74(5) of Central Goods and Services Act, 2017. The show cause notice was with regard to reversing the claim of input tax credit for the year 2017-2018 and 2018-2019. In response to the show cause notice of the second respondent notice, the petitioner's father sent a reply dated 29.04.2021. Thereafter, the second respondent vide his order dated 09.08.2021, levying tax liability of Rs.51,46,620/- along with penalty due at 100% under Section 74 of the Act and claiming an interest to be calculated at the rate specified from the date following the due date of payment to the actual date of payment of tax. Against such order, the petitioner's father preferred an appeal under

Section 107(1) of TNGST Act, 2017 before the first respondent and the appeal is pending. In the meanwhile, the petitioner and his mother C.Vimala, as the partners of N.C.N Traders has commencing the Margin Free Market at Thickanamcode made an application for loan with the third respondent for an amount of Rs.4,56,00,000/-. They had made all basic facilities including building and other infrastructure. Along with the loan application, they submitted the documents of his father property as collateral security. The loan was processed and sanctioned by the third respondent by way of Memorandum of Deposit of Title Deeds bearing Document No.2875/2022 dated 30.05.2022 of Karingal Sub-Registry was also executed by the petitioner's father in favour of the third respondent. While this being so, when the loan was at the verge of being disbursed, by the impugned letter it is kept on hold. When the petitioner applied for encumbrance certificate with respect to the property, it was found that no such charge has created, made as reflected in the encumbrance certificate. Since the third respondent refers to the first and second respondents, are the reason for non disbursement of the loan, the present Writ Petition has been filed.

3. The learned Special Government Pleader appearing for the first and second respondents submitted that there was a dispute with regard to input tax credit and the petitioner's father was involved in the non payment of tax for which proceedings initiated. After adjudication the second respondent confirmed the tax liability and issued orders with penalty. Finding there was evasion with knowledge, penalty was also imposed. Against which the petitioner's father filed an appeal before the first respondent which is pending. Thereafter, finding that the family property is being produced as collateral security and huge sums of loan around Rs.4,56,00,000/- to be obtained based on the property, and the Department will be left with no source for recovery, hence they have taken precautionary measure on sending the objections, for creating any charge, lien or alienation to the property and send representation dated 22.08.2022 to the Sub Registrar Office, Eranial, which is recorded and the same is also reflected in the Encumbrance Certificate. Hence in the interest of revenue, such restriction has been imposed.

4. The learned counsel for the third respondent submitted that on the application of the petitioner, the loan was processed and the title deeds were verified and the land tax receipt were looked.

The Document No.455/2001 was found without any Encumbrance. Hence processed the loan application, at that time, a communication received from the second respondent on 03.06.2022 informing about the lien and restriction created on the property based on which the loan put on hold. Since the disbursement of loan was based on the public money, considering the public interest and that of the Bank, withheld the loan granted to the petitioner, if the petitioner is able to provide equal alternate property as security without any encumbrance, the same can be considered, with the present property, the loan cannot be disbursed.

5. In view of the same, this Court finds no reason to quash the impugned order. Recording the same, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**25.08.2022**

Index : Yes / No
Internet : Yes/ No
Nsr

To

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**M.NIRMAL KUMAR, J.**

Nsr

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