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W.P.No.4788 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2023

CORAM

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.4788 of 2023 and W.M.P. No.4803 of 2023

Poovai Amman Agencies,
rep. by its Proprietor S.Selvaraj

... Petitioner

VS

1.The State Tax Officer,
Kallakurichi – 606 202,
Kallakurichi District.

2.The Authorised Officer,
City Union Bank Limited,
Credit Recovery and Management Department,
24-B Gandhi Nagar,
Kumbakonam – 612 001.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records on the file of the first respondent in his Proceedings in Na.Ka.A3/498/2023 dated 07.02.2023.

For Petitioner : Mr.K.K.Senthilvelan

For first respondent : Mrs.K.Vasanthamala,
Government Advocate



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ORDER

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By consent of both the parties, this writ petition is taken up for final disposal in the admission stage itself.

2.This writ petition has been filed challenging the Auction Notice dated 07.02.2023, issued by the first respondent pursuant to the rejection of the Rectification Petitions filed by the petitioner under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006.

3.The impugned Auction Notice pertains to the assessment years 2007-08 to 2011-12. As seen from the impugned Auction Notice, the tax and penalty liability of the petitioner is Rs.6,54,19,720/- (Rupees six crores fifty four lakhs nineteen thousand seven hundred and twenty only). The properties are brought for auction for non payment of the said sum by the petitioner. The petitioner has challenged the impugned Auction Notice on the following grounds:

a)According to the petitioner, the respondents, by total non-application of mind and by not adhering to the principles of natural justice, has dismissed the petitions filed by the petitioner under Section



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84(1) of the Tamil Nadu Value Added Tax Act, 2006 seeking for rectification of the assessment orders dated 14.12.2018;

b)While the Writ Petitions namely, W.P. Nos.18454, 18458 and 18461 of 2020 were pending before this Court in respect of various other assessment orders seeking for disposal of the petitions filed under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006, on merits and in accordance with law, the first respondent has arbitrarily and without considering the pendency of the aforesaid writ petitions, has rejected the petitions filed under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006 seeking for rectification of the assessment orders pertaining to the assessment years 2007-08 to 2011-12 which has levied a penalty of 150% for the assessment years 2007-08 to 2011-12;

c)No reasons have been given by the first respondent for rejecting the petitioner's petitions filed under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006, pertaining to the assessment years 2007-08 to 2011-12 under the impugned order dated 14.12.2018. Only due to the challenge made to the provisions of Section 19(11) of the Tamil Nadu Value Added Tax Act, which deals with the reversal of input tax credit,



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the petitioner did not file the Statutory Appeal as against the assessment orders dated 28.01.2013 and 15.10.2013.

d)Immediately after the challenge to the said provision, namely Section 19(11) was rejected by the Hon'ble Supreme Court, the petitioner has filed petitions under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006 in the year 2018 and therefore, there is no delay on the part of the petitioner.

4.Heard Mr.K.K.Senthilvelan, learned counsel for the petitioner and Mrs.K.Vasanthala Mala, learned Government Advocate, who accepts notice on behalf of the first respondent.

5.Learned counsel for the petitioner drew the attention of this Court to the impugned Auction Notice dated 07.02.2023 as well as the order dated 13.01.2020 passed by the first respondent under Section 84 of the Tamil Nadu Value Added Tax Act, 2006. He would submit that no reasons have been given in the order dated 13.01.2020 for rejecting the petitioner's petitions filed under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006. He would also submit that no personal hearing



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was afforded to the petitioner before rejecting the petitioner's petitions.

He would further submit that when the writ petitions are pending consideration in respect of the above assessment years, wherein the petitioner had sought for Mandamus seeking for disposal of the Rectification Petitions, the first respondent ought not to have passed the order dated 13.01.2020 rejecting the petitioner's petitions filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, which pertains to the assessment years 2007-08 to 2011-12. According to him, arbitrarily and by total non-application of mind, the order dated 13.01.2020 rejecting the petitioner's petitions under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 has been passed by the first respondent and the consequential Auction Notice dated 07.02.2023, which is impugned in this writ petition, has also been issued.

6.Learned counsel for the petitioner would submit that the petitioner will be put to irreparable loss and hardship as their properties are being brought for sale despite the fact that the imposition of 150% penalty under the assessment orders has been passed arbitrarily and erroneously, which was the subject matter of the Rectification Petitions filed under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006.



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7.Per contra, the learned Government Advocate appearing for the first respondent would submit that the assessment orders pertain to years 2007-08 to 2011-12 and that earlier the very same petitioner had filed a Writ Petition in W.P. No.6309 of 2017 before this Court in the year 2017 and in the said writ petition, a conditional order was passed and the petitioner was directed to pay a sum of Rs.30,00,000/- before the first respondent. She would submit that the sum of Rs.30,00,000/- was also not paid by the petitioner and thereafter, the above said writ petition came to be dismissed. She would also submit that the Rectification Petitions under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006 pertaining to the assessment years 2007-08 to 2011-12 were filed only in the year 2018 though the assessment orders were passed in the year 2013 itself.

8.Learned counsel for the petitioner would submit that the Rectification Petitions were not filed immediately after passing of the assessment orders only on the ground that the above writ petitions are filed challenging Section 19(11) of the Tamil Nadu Value Added Tax Act, 2006, which is the provision dealing with reversal of input tax credit.



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9.Learned Government Advocate appearing for the first respondent would submit that when the petitioner has not exercised the statutory appellate remedy, this writ petition is not maintainable after a lapse of almost ten years from the date of the assessment orders. She would also submit that only in accordance with the provisions of Section 84 of the Tamil Nadu Value Added Tax Act, 2006, the order dated 13.01.2020 was passed and consequently, the Public Auction Notice was issued to bring the properties, belonging to the petitioner, for sale.

Discussion:

10.The following are the Undisputed facts:

a)No Statutory Appeal has been filed by the petitioner if aggrieved by both the assessment orders dated 28.01.2013 and 15.10.2013, pertaining to the assessment years 2007-08 to 2011-12;

b)The Rectification Petitions under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006 were filed by the petitioner only in the year 2018 though the assessment orders were passed in the year 2013 itself. Therefore, only after a lapse of five years from the date of the assessment orders, the petitioner has filed the Rectification Petitions;



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c)The petitioner has not complied with the conditional order passed by this Court in the year 2017 in W.P. No.6309 of 2017 filed by the very same petitioner by paying a sum of Rs.30,00,000/- to the first respondent;

d)The challenge was made only to the provisions of Section 19(11) of the Tamil Nadu Value Added Tax Act, 2006, which is the provision dealing with reversal of input tax credit.

e)No stay of the assessment orders pertaining to different assessment years than the assessment years for which this writ petition is filed was granted by this Court in the writ petitions filed by the petitioner in W.P. Nos.1833 and 1835 of 2013.

11.As seen from the undisputed facts, it is clear that the petitioner has been indifferent all through. The assessment orders for the assessment years 2007-08 to 2011-12 has not been challenged by the petitioner by filing a Statutory Appeal. Instead he has chosen only to file the Rectification Petitions under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006 to rectify the assessment orders for the assessment



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years 2007-08 to 2011-12. The said Rectification Petitions were also filed only in the year 2018 though the assessment orders are of the year 2013, which came to be rejected by order of the first respondent dated 13.01.2020.

12. Section 84 of the Tamil Nadu Value Added Tax Act, 2006 reads as follows:

'84. Power to rectify any error apparent on the face of the record -

(1) An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within (six) years from the date of any order passed by it, rectify any error apparent on the face of the record:

Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice to the dealer and has allowed him reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund, which may be due to the dealer.

(3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer a revised notice of assessment or penalty



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and thereupon the provisions of this Act and the Rules made thereunder shall apply as if such notice had been given in the first instance.

(4)The powers under sub-section (1) may be exercised by the assessing authorities even though the original order of assessment, if any, passed in the matter has been the subject matter of an appeal or revision.

(5)The provisions of this Act relating to appeal and revision shall apply to an order or rectification made under this Section as they apply to the order in respect of which such order of rectification has been made.'

13.As seen from Section 84 of the Tamil Nadu Value Added Tax Act, 2006, only in cases where there is an error apparent on the face of the record, the rectification of an assessment order can be entertained. The first respondent under the impugned order has categorically held that no case has been made out by the petitioner for rectification of the assessment orders. The proviso to Section 84 of the Tamil Nadu Value Added Tax Act, 2006 also makes it clear that only in cases where the authority decides to revise the assessment, there is a necessity for granting an opportunity of hearing to the dealer (the petitioner herein).



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14. In the case on hand, the authority, while deciding the petitions filed under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006, has not revised the earlier assessment orders passed by the respondents and therefore, has rightly not granted any opportunity of hearing to the petitioner. No specific request for personal hearing was also sought for by the petitioner.

15. Learned counsel for the petitioner would submit that in respect of other assessment years, the petitioner was called for personal hearing. Each assessment has to be treated independently and just because in respect of other assessment orders, where the petitioner had sought for similar rectification, the petitioner was granted personal hearing, the petitioner cannot contend that in respect of the assessment years 2007-08 to 2011-12 also, personal hearing will have to be granted, which cannot be accepted by this Court as the discretion to grant personal hearing is vested only with the authority. When Section 84 makes it clear that only in cases where there is a revision of assessment made by the authority while deciding a petition under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, there is a requirement for granting personal hearing to the petitioner, the petitioner cannot now contend that the first



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respondent will have to grant personal hearing to the petitioner also for the assessment years 2007-08 to 2011-12. There is an inordinate delay on the part of the petitioner to file the Rectification Petitions under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006.

16. Admittedly, only after a lapse of almost five years from the date of the assessment orders, the petitioner has filed the Rectification Petitions in the year 2018 even without filing a Statutory Appeal as against the assessment orders dated 28.01.2013 and 15.10.2013 pertaining to the relevant assessment years 2007-08 to 2011-12.

17. This Court has also perused and examined the order dated 13.01.2020 passed by the first respondent, which culminated in the issuance of the impugned Auction Notice dated 07.02.2023. In the order dated 13.01.2020, the first respondent has observed that this Court while dismissing the Writ Petition in W.P. No.6309 of 2017 on 18.06.2019, granted liberty to the petitioner to file a Statutory Appeal as against the assessment orders for the years 2007-08 to 2011-12 within a period of sixty days from the date of receipt of a copy of the said order. The first respondent has also observed that having not exercised the statutory



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appeal as directed by this Court in its order dated 18.06.2019 passed in W.P. No.6309 of 2017, the petitions filed under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006, by the petitioner seeking for rectification of the assessment orders cannot be entertained under any circumstances whatsoever. This Court does not find any infirmity in the said observation after seeing the conduct of the petitioner, the details of which are observed in the earlier paragraph of this order which will reveal that only to protract the inevitable, the Rectification Petitions have been filed. This Court does not find any merit in this writ petition and the consequential Auction Notice dated 07.02.2023, which is impugned in this writ petition also does not deserve any interference by this Court.

18.In the result, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2023

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Note: Issue order copy on 21.02.2023



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ABDUL QUDDHOSE, J.

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To

- 1.The State Tax Officer,
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- 2.The Authorised Officer,
City Union Bank Limited,
Credit Recovery and Management Department,
24-B Gandhi Nagar,
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