IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.8145 of 2021 and
W.M.P. Nos.8703 and 8704 of 2021

N.Abdul Rahim ..Petitioner

Vs.

1. The Joint Commissioner
Chennai South Division
Office of Joint Commissioner (CT)
Greames Road, Chennai 6.

2. Assistant Commissioner (CT)
Porur Assessment Circle,
No.4/109, Bangalore Highway Road,
Varadharajapuram, Nazarathpet,
Chennai 600 123.

3. The State Tax Officer
Office of the Assistant Commissioner (ST)
Porur Assessment Circle
No.4/109 Bangalore Highway Raod,
Varadharajapuram, Nazarathpet,
Chennai 600123. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the Impugned Notice vide tngst.1380052/1993-94 to 2004-2005 dated 04.01.2021, passed by the 3rd Respondent, quash the same as illegal, incompetent and unconstitutional.

For Petitioner : Mr.Salai Varun

For Respondents : Ms.Ranganayaki
Additional Government Pleader

ORDER

The Writ Petition is filed challenging the recovery notice dated 04.01.2021 whereby the petitioner was called upon to pay the alleged of arrears of Rs.30,48,529/- within 7 days. The petitioner has challenged the impugned notice on the premise that the same is made pursuant to rejection of the application filed under Tamil Nadu Sales Tax Settlement of Arrears Act, 2011 (hereinafter referred to as "Samathan Scheme") overlooking the relevant provisions. The present demand of taxes relates to one M/s.Kartikeya Industries who after obtaining a loan from M/s.TIIC Vellore Branch had failed to repay and the property in question viz., Plot No.87 and 132, SIDCO Industrial Complex was brought to public auction in terms of the State Financial Corporation Act. The petitioner would submit that he had participated in the public auction and emerged as a successful bidder and had paid a sum of Rs.35,70,000/- and Rs.39,30,000/- in respect of Plot No.87 and 132 respectively.

2. However, there was persistent demand from the Respondent

department, the petitioner would submit that to give the issue a quietus he availed the benefit of the Samadhan Scheme and filed an application. Pursuant to the notice issued by the 2nd respondent, the petitioner had paid a sum of Rs.50,55,013/- which was stated to be the amount due in terms of Samadhan Scheme. Importantly, the respondent vide letter dated 28.02.2012 stated that in view of availing the benefit of the scheme and paying the requisite tax, no further recovery proceedings would be initiated. It was once again reiterated vide letter dated 25.06.2012 that no outstanding taxes are payable and no proceedings would be initiated thereof. Whileso, the petitioner was informed vide notice dated 20.03.2015 that the application under Samadhan Scheme was rejected after almost 4 years unilaterally. The third respondent has proceeded to issue the impugned notice dated 04.01.2021 demanding a sum of Rs.30,48,529/- along with the interest calling upon the petitioner to pay the same within 7 days from the date of receipt of the impugned notice.

3. It is submitted now by the learned counsel for the petitioner that despite having paid the sums of Rs.50.55 lakhs, the impugned demand notice was issued seeking to recover a sum of Rs.30.48 lakhs unilaterally. It is the further submission of the learned counsel for the petitioner that he is a bonafide purchaser of the property for valuable consideration without notice of the

arrears of the tax under TNGST Act, 1959 of the previous owner of the property and thus any proceeding for recovery of the taxes due from M/s.Karthikeya Industries in the hands of the petitioner or any proceeding against the property purchased is without authority of law. Further, the basis for raising the present demand of Rs.30,48,529/- is not known. Importantly, the respondent having accepted a sum of Rs.50.55 lakhs under the Scheme and having issued communication dated 25.06.2012 wherein it was stated that in respect of the arrears relating to Sri.Karthikeya Industries of Rs.85,03,542/- for the assessment years 1993-94 to 2004-05 on payment of a sum of Rs.50,55,013/- representing the tax and interest due in terms of Samadhan Scheme and that there are no further dues from Sri.Karthikeya Industries. In view thereof, the impugned demand of the respondent is bad for want of jurisdiction.

4.The learned counsel for the respondent was also unable to explain the basis for the present demand. It is submitted by the learned counsel for the Respondent that the petitioner having availed the scheme ought to have paid the remaining sum of Rs.30,48,529/-. It is submitted that the petitioner cannot claim himself to be a bonafide purchaser as he was apparently aware of the recovery proceedings which was initiated by the Revenue.

5. Having heard both sides, this Court is of the view that this is a case where it is not very clear as to how the present demand of Rs.30,48,529/- has been arrived at after payment of a sum of Rs.50,55,013/- in terms of Samadhan Scheme. There is no clarity as to the basis on which Rs.30,48,529/- is demanded. The impugned order is set aside with a direction to the respondent to put the petitioner on notice as to the basis for the present demand. If any such notice is issued it is always open to the petitioner to raise all contentions which is available to them including legality of any demand in the light of the letter dated 28.02.2012 of the respondent that no further recovery proceeding would be initiated in view of the payment of a sum of Rs. 50,55,013/- in terms of the Samadhan Scheme. On receipt of such objections, the same shall be disposed of in accordance with law.

6. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

10.11.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
Spp/ Mka

To:

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MOHAMMED SHAFFIQ, J.

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