IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.327 of 2022
and
W.M.P.No.363 of 2022

Tvl.Maadhu Traders,
Represented by its Proprietor
M.Madeshwaran,
No.4/175, 1 Nachinampatty,
H.Thottampatti, Harur Taluk,
Dharmapuri District. ... Petitioner

Vs.

1.The Commercial Tax Officer-II,
Commercial Taxes Departments,
Puducherry.

2.The State Tax Officer,
Harur Assessment Circle,
Harur, Dharmapuri District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the second respondent in TIN : 33913341338/2016-2017 dated 11.10.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner	:	Mr.N.Sripraksh for Mr.R.Senniappan
For Respondents	:	
For R1	:	Mr.V.Vasantha Kumar Additional Government Pleader (Pondicherry)
For R2	:	Ms.Amirtha Poonkodi Dinakaran Government Advocate

ORDER

The petitioner is aggrieved by the impugned Assessment Order dated 11.10.2021 passed by the second respondent, confirming the demand proposed in the Show Cause Notice dated 05.12.2020.

2. Relevant portion of the impugned Assessment Order reads as under:-

> *"The objection filed by the dealer/the information available in the IT return (3-CD)/the information available in the monthly VAT return filed in Puducherry State/the information available in the assessment order issued by the CTO/Puducherry State etc have been examined carefully with following results:-*
>
> *1. The dealer had imported edible oil using the registered number issued under the TNVAT Act 2006 in Harur*

Assessment Circle (Tin 33913341338). It is the recorded evidence available in the customs department, Chennai.

2. *The total purchase value as per the customs department records is Rs.65,79,45,421.00 whereas the dealer have mentioned the total imported value at Rs.62,64,90,023.00 in the objections.*
3. *The dealer had downloaded only seven numbers of transit passes out of 483 as per the information available in the departmental wet-site as follows.*

Date of Generation of Transit Pass		No.of Transit Pass
10.08.2016		2
12.08.2016		5
	Total	7

But as per the information furnished by the dealer in his objections dated 18.01.2021, the dealer have furnished the import purchase details during the months of Aug 16, Sep 16, Nov 16, Dec 16 and Jan 17.

4. The Transit passes downloaded were not surrendered in the last check-post in Tamil Nadu (Kandamangalam) as per the information available in the department web-site.

5. The information available in the Income Tax Return (3-CB) it has been mentioned as "Murugesan Madeshwaran" (Father name of Murugesan)

Whereas in the monthly returns filed in the puducherry state it has been mentioned as "Maadeswaran S/o Madhuvaran." (Father name of Madhuvaran)

6. The Chartered Accountant have certified that the accounts have been kept in the head office at Dharmapuri and two branches (vide form No.3-CB)

7. In the I.T. Statement Form No.3-CD-Part-A/the VAT Tin number has been furnished as 33913341338 (Tin issued in Harur Assessment Circle)

All the above facts goes to prove that Thiru.Murugesan Madheswarn of Harur (Nachinampatti) and Thiru. Madheswaran S/o Madhuvaran are different persons.

Thiru. Murugesan Madheswaran of Harur (Nachinampatti)/Harur had imported edible oil and sold the same in Tamil Nadu and have filed the Income Tax Return. He has fabricated the Transit passes - as if it was surrendered with intention to suppress the purchases of imported edible oils.

The objection filed by the dealer deserves no consideration and therefore rejected. The proposals are confirmed.

Total escaped sales turnover u/s. 27(1)(a) determined	*: Rs. 81,32,20,541.00*
Tax due	*: Rs. 4,06,61,027.00*
Tax paid	*: Rs. - Nil -*
Balance	*: Rs. 4,06,61,027.00*

A demand Notice in Form-O is issued.

Penalty u / s. 27(3)

The dealer had willfully suppressed the imported purchases of edible oil and the corresponding sales turnover / relevant payment of tax. The suppression would not have brought to light but for the verification of customs department records / check post movements and the surrender of transit passes. Therefore penalty is levied at 150% of the actual tax suppressions as follows:

Actual suppression	*: Rs.4,06,61,027.00*
Penalty levied @ 150%	*: Rs.6,09,91,541.00*
Penalty paid	*: Rs. - Nil -*
Balance	*: Rs.6,09,91,541.00*

A demand Notice in Form-RR is issued."

3. The specific case of the petitioner is that the impugned order has been passed beyond the scope of the Show Cause Notice. The Officer has passed the impugned order under dictation and without considering the evidences produced by the petitioner to show that the petitioner had imported consignments of edible oils under 117 Bills of Entries, which were purchased as high-sea and directly cleared from the Customs area after clearance to Pondicherry by filing necessary Form in Form-LL under Rule 15(7) of the Tamil Nadu Value Added Tax (TNVAT) Rules, 2007 for which, necessary applications in Form-KK were also issued to the petitioner and all the transit forms were surrendered by the petitioner to the Deputy Commercial Tax Officer at Kandamangalam Check Post.

4. The impugned order is also assailed on the ground that although the petitioner had filed copies of transit passes along with the reply to the notice dated 05.12.2020 in their reply dated 18.01.2021, they been ignored to conclude that the petitioner had utilized the VAT registration issued under the Tamil Nadu Value Added Tax (TNVAT) Act, 2006, to move the imported consignment.

5. It is the case of the petitioner that the petitioner has paid Value Added Tax and filed returns on the imported goods sold in Pondicherry and there were no local sales in Tamil Nadu.

6. The learned counsel for the petitioner has attempted to demonstrate few instances of the transactions with relevant Form-LL and Form-KK from among consignments of oil imported under 117 Bills of Entries (along with Import/Export Code).

7. That apart, it is submitted that only mistake that was committed by the petitioner was in the Form 3-CD filed along with the Income Tax returns for the Assessment Year 2017-2018 (for the relevant previous year 2016-2017) which has been mentioned in the impugned order.

8. It is submitted that barring the aforesaid mistake, there were no other mistakes. Goods have suffered Value Added Tax under the Puducherry Value Added Tax (PVAT) Act, 2007.

9. The learned counsel for the petitioner has also drawn attention to the Statements of Accounts along with the Returns of Income filed by the petitioner on 07.11.2017 under the Income Tax Act, 1961, wherein, clearly, the petitioner has declared the purchase for Rs.266,41,76,481.70/- and in the same Statement of Account, the sale at petitioner's head quarters at Harur in Tamil Nadu has been declared as Nil and that the entire sale from Pondicherry Branch Office for which, the petitioner has a separate VAT Registration and the total turnover has been declared as Rs.271,54,13,839.20/-.

10. Hence, it is submitted that the impugned order is unsustainable and the case has to be remitted back to the respondents to pass a fresh order. It is further submitted that mistake in the name of the petitioner and the father of the petitioner in the returns filed under the Income Tax Act, 1961 and the Puducherry Value Added Tax (PVAT) Act, 2007 is not sufficient to conclude that the transactions had taken place in Tamil Nadu. It is submitted that in the returns filed by the petitioner for the respective months during the period in dispute, the TIN number of the petitioner in Pondicherry was used and there is no dispute regarding the identity of the petitioner, although the name

in the declaration has been given as Maadeswaran S/o.Madhuvaran instead of M.Madeshwaran, S/o.V.Murugesan.

11. The learned counsel for the petitioner further submitted that the first respondent has also confirmed that the entire consignment covered by 117 Bills of Entries were subjected to VAT under the Puducherry Value Added Tax (PVAT) Act, 2007.

12. The learned Additional Government Pleader (Pondicherry) for the first respondent has drawn attention to the communication exchanged between the second respondent and the first respondent and has confirmed that the consignment was locally sold in Pondicherry and was taxed under the provisions of the Puducherry Value Added Tax (PVAT) Act, 2007.

13. The learned Government Advocate for the second respondent on the other hand submits that TNVAT Registration No.33913341338 was surrendered in the year 2014. However, the same was used for generating transit pass in Form-LL and Form-KK under Section 70 of the TNVAT Act, 2006 read with Rules 14, 15, 16 and 18 of the TNVAT Rules, 2007.

14. That apart, it is submitted that the petitioner had himself given the details of Statement of Movement and therefore, the second notice came to be issued on 09.09.2020 calling upon the petitioner to furnish the documents relating to transit pass, which was not furnished. It is further submitted that all the transit passes have not been furnished for all the movement of imported consignments of edible oils covered by 117 Bills of Entries from the Chennai Customs to Pondicherry.

15. That apart, it is submitted that the petitioner was also called for personal hearing. However, the petitioner failed to appear and therefore, based on the available material, the impugned order has been passed.

16. It is therefore submitted that this writ petition is liable to be dismissed by giving liberty to the petitioner to work out a statutory remedy under the provisions of the TNVAT Act.

17. The learned Government Advocate for the second respondent further submits that the petitioner had also filed similar writ petition for one

of the previous Assessment Year in W.P.Nos.10219 to 10222 of 2018 and an order came to be passed in the said writ petition by directing the petitioner to deposit 15% of the disputed tax. The petitioner has however failed to pay the amount.

18. Hence, it is submitted that even on this count, the discretional remedy under Article 226 of the Constitution of India should not be extended to the petitioner. Hence prays for dismissal of the writ petition.

19. I have considered the arguments advanced by the learned counsel for the petitioner, the learned Additional Government Pleader (Pondicherry) for the first respondent and the learned Government Advocate for the second respondent.

20. I have perused the impugned order. I have also perused the notice dated 05.12.2020 that preceded the impugned order dated 11.10.2021 and the subsequent notice dated 09.09.2020 asking the petitioner to furnish transit pass. I have also perused the voluminous records filed by the petitioner.

21. *Prima facie*, it appears that the documents that have been filed before this Court have not been considered by the respondents while passing the impugned order. There has to be a proper co-relation between 117 Bills of Entries under which, the imports were made by the petitioner along with Form-LL and Form-KK for movement of the consignment together with Lorry Receipts.

22. The mistakes in the names in Form 3-CD by referring to the surrendered VAT Registration No.33913341338 issued under TNVAT Act or its reference in the applications filed under Section 70 of the TNVAT Act read with sixth schedule or the mistake committed by the petitioner in VAT Form No.1 may not be a relevant factor if the TIN number matches with the TIN number in the Certificate of Registration granted to the petitioner under the provisions of the Puducherry Value Added Tax (PVAT) Act, 2007.

23. Such mistakes or discrepancies if any can be overlooked. As long as there is a co-relation between the PAN number of the petitioner issued under the Income Tax (IT) Act and the PAN number mentioned in the

Certificate of Registration issued under the PVAT Act with the returns filed under the Act is sufficient, the returns cannot be ignored mere filing of few of documents is not *ipso facto* sufficient.

24. At the same time, there has to be a proper co-relation between the imports and the documents generated under Section 70 read with sixth schedule to the TNVAT Act read with Rule 14, 15, 16 and 18 in Form-KK and Form-LL of the TNVAT Act. Such a co-relation between the imports covered by the Bills of Entries together with documents have to be established. The respondents have to scrutinize the same.

25. To do the above exercise, it is incumbent on the part of the petitioner to file all the documents with a proper tabulation. The petitioner shall therefore file all the documents i.e., Import Invoices, Bills of Entries and corresponding Form-KK and Form-LL generated for movement of imported consignments covered by the respective Bills of Entries together with the corresponding Lorry Receipts. The petitioner shall tabulate the same for the respondents to scrutinize the same. The petitioner shall therefore file tabulation along with the documents within a period of thirty

days from the date of receipt of a copy of this order. The second respondent shall scrutinize the documents and pass a final order after hearing the petitioner. The impugned order is therefore set aside and the case is remitted back to the respondents to pass a fresh order *de novo* within a period of sixty days from the date of receipt of a copy of this order.

26. Fresh assessment in the *de novo* proceedings shall be made without getting influenced by any observations, which preceded the notices, internal communications of the Enforcement Department.

27. This Writ Petition is disposed of with the above observations. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

16.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

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To

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Commercial Taxes Departments,
Puducherry.

2.The State Tax Officer,
Harur Assessment Circle,
Harur, Dharmapuri District.

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