BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)Nos. 9856 & 9857 of 2023
and
W.M.P(MD)Nos. 8685 & 8686 of 2023

A. Gunabalan ... Petitioner in both the Writ Petitions

Vs.

The State Tax Officer,
Ramanathapuram Assessment Circle,
Ramanathapuram. ... Respondent in both the Writ Petitions

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Certiorari*** to call for records of the respondent in TIN No. 33785440247/2014-2015, 2015-2016 and quash the order, dated 30.03.2023 along with the consequential demand raised against the petitioner as it is incorrect, unlawful, in violation of the principles of natural justice.

In Both the Writ Petitions:

For Petitioner : Mr.R.D.Ganesan

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

These writ petitions are filed for ***Writ of Certiorari*** to quash the revised Assessment Order passed by the respondent in TIN No.33785440247/2014-2015, 2015-2016, vide Order, dated 30.03.2023.

2. The petitioner was a partner in M/s.Amirtham Oil Company along with one Guna and L.Shanmugarajan. The petitioner and the said L.Shanmugarajan had dissolved the partnership firm as early as 2002. The dissolution deed was legally executed and registered with the Joint Sub-Registrar, Ramanathapuram, vide document No.37/2002. The final settlement was arrived amicably and the petitioner was ceased to be the partner of M/s.Amirtham Oil Company with effect from 30.04.2002. Thereafter, the said business was taken over and run by the said L.Shanmugarajan, independently as proprietorship concern. Since the business was decided to continue after the petitioner's retirement from the business on 30.04.2002, the L.Shanmugarajan undertook all the liabilities of the business and also took responsibility for proper intimation of the petitioner's retirement to the Registering Authority as per Rule 42 of the Tamil

Nadu General Sales Tax Rules, 1959. While, the matter being so, the petitioner received notice informing that the said M/s.Amirtham Oil Company Registration No.33785440247, had conducted business until 2014 was found under "cancelled dealer list", as proper accounts were not furnished, the account books were called to be produced within 7 days. The petitioner immediately filed a detailed reply narrating the commencement of business and the date of petitioner's retirement and requested the respondent to drop an action against the petitioner for the Assessment year 2014-2015 and 2015-2016. Without considering the reply the respondent has passed an order 19.03.2021 and raised demand notice against the petitioner. Hence, the petitioner has filed WP(MD)Nos.8009 & 8012 of 2021. This Court vide order, dated 27.07.2022 quashed the impugned order, however, directed the petitioner to appear before the respondent along with the required documents to substantiate the claim and thereafter the respondent was directed to pass orders after considered the documents of the petitioner. Based on the above said order, the petitioner has submitted reply and the respondent has issued notices, dated 14.10.2022 and 09.11.2022 for personal hearing. After receipt of the notices, the petitioner has filed another reply, dated 18.11.2022 along with documents. Even after, the petitioner had narrated that the M/s.Amirtham Oil

Company Registration No.33785440247 was running as a sole proprietorship concern, the respondent without considering the said plea has passed the Reassessment Order, dated 13.12.2022. Hence aggrieved over the same, the petitioner knocked the door of this Court by filing writ petition in W.P(MD)No.21 of 2023. Again, this Court remitted back the matter to the respondent with specific direction to consider the plea of the petitioner. The respondent has considered the case and pass the present impugned order and aggrieved over the impugned order the present writ petition is filed.

3. The respondents had filed counter stating that the writ petition is not maintainable since effective alternative remedy of appeal to the Jurisdictional Appellate Deputy Commissioner is available. The revision of assessment was made out based on the scrutiny of returns with web report, hence show cause notice was issued. The burden of proof is lying with the dealer as per section 17 of the Act. Based on the defects pointed out during the course of scrutiny of returns i.e. purchases effected after cancellation of Registration Certificate from M/s. Hindustan Petroleum Company at this end, orders were already passed for the years levying tax of Rs.11,39,408/- and interest Rs.16,65,055/- vide proceedings dated 19.03.2021 for the year 2015-2016. The petitioner challenged the same in earlier writ petition and the same was disposed of vide order dated 14.10.2022. Based on the said order the petitioner had filed objections stated that M/s. Hindustan Petroleum Company is still alive and the registration of M/s.Amirtham Oil Company already cancelled with effect from 28.11.2014 itself. Overruling the said objection revised order dated 13.12.2022 was passed and the same is accordance to law. Again, the petitioner filed another writ petition and again the case was remitted back vide order 03.01.2023. The respondents had issued notice of hearing but the same was returned. However, the petitioner had filed earlier objection dated 16.09.2022 and 18.11.2022 wherein it is stated that M/s. Amirtham Oil Company was already cancelled with effect from 28.11.2014 and relieved himself from the partnership of the same through Doc.No.37 dated 02.05.2002 with effect from 02.05.2002. But verification from the respondents revealed that no such cancellation of Registration Certification entries were available in the registers and no such entries regarding the dissolution of partnership were available in the registers. Further both the said Mr. L.Shanmugarajan and Mr.A.Gunabalan were joined as partners commenced their business from 01.05.2017 dealing the goods “kerosene sold through public distribution system" under the name and style of "Amirtham Oil Company" vide TIN No. 33776493977 dated 27.08.207 at No.7, Allikanmai East Street, Ramanathapuram – 625501 and hence it is evident that both the partners are still doing their business under the name and style of "Amirtham Oil Company" and Mr.L.Shanmugarajan has not given any representation from the beginning to till this date. Further in response to the personal hearing notice dated 06.03.2023 (personal hearing on 29.03.2023) instead of appearing in person, the petitioner sought adjourned to file objections, hence it is clear that the petitioner is not having any details / records for verification. Moreover, the Hon'ble Court had directed to complete the proceedings on or before 31.03.2023 without any deviation, hence the request of adjournment was rejected and order passed on 30.03.2023 confirming the same tax liability and interest. Hence the respondents prayed to dismiss the writ petition.

4. Heard Mr.R.D.Ganesan, the Learned Counsel appearing for the petitioner, Mr.R.Suresh Kumar, the Learned Additional Government Pleader appearing for the respondent and perused the material documents available on record.

5. The Learned Additional Government Pleader appearing for the respondent vehemently opposed the contention of the petitioner and submitted that the petitioner had never informed the authorities that the partnership firm was dissolved. The Tamil Nadu VAT Tax Act, 2007 prescribes 'Forms B & C'. The Form 'B' is for “change in the name of dealer” and Form 'C' is for “change in Principal Place of Business”. The petitioner has not submitted the said Form. However, this contention was vehemently opposed by the Learned counsel appearing for the petitioner and submitted that the petitioner has retired in the year 2002. But the respondent has relied on the Tamil Nadu VAT Act, which came into effect in the year 2006 and hence, the said Act is not applicable to the petitioner. Therefore, this Court is of the considered opinion that when the petitioner was retired in the year 2002 itself, the TNVAT Act which came into effect in the year 2006, the contention of the respondent cannot be accepted.

6. The next contention that was raised by the respondent is that as per the Indian Partnership Act, 1932, the retiring partnership shall issue a public notice to the general public intimating the retirement so that the persons dealing with the concern would not deal with the retired partners. But the contention of the petitioner is that the same was registered vide Doc. No. 37 of 2002 dated 02.05.2002. Since, the petitioner has already registered the retirement and the deed of dissolution before the appropriate Sub-Registrar Office, which is a public document, the petitioner cannot be found fault with.

7. The respondent submitted that as per ***Rule 42 of the Tamil Nadu General Sales Tax Rules,*** the petitioner should intimate dissolution. The provision is extracted here under:

> *"Rule 42: if a partnership is dissolved, every persons who was a partner at the time of dissolution shall send within thirty days of such dissolution to the registering authority and to the assessing authority, if he is different from the registering authority and if the registered dealer has more than one place of business, also the [Commercial Tax Officer] of the Deputy Commercial Tax Officer in whose area of jurisdiction the registered dealer has a place of business."*

The contention of the petitioner is that the remaining partner Mr. L.Shanmugarajan undertook to intimate the dissolution to the respondent. Infact subsequently the remaining partner L.Shanmugarajan had registered himself under the TNVAT Act by filing Form D and obtained "Certificate of

Registration" dated 12.01.2007. In the said certificate the said L.Shanmugarajan had affixed his photo along with signature in the photo. Further the said L.Shanmugarajan had filed Audit Report for the year ending 31.03.2015 under section 63-A of TNVAT Act in Form WW prescribed under Rule16-A, wherein it has been specifically stated that the said concern is proprietorship. In the Trading Profit and Loss Account for the year ended 31.03.2015 it has been mentioned as "Amirtham Oil Company L.Shanmugarajan, (Prop), 89, Vandikara Street, Ramanathapuram. In Balance Sheet it has been specifically stated the status as "Individual". The aforementioned documents are submitted by the said L.Shanmugarajan to the respondent department. Therefore, this Court is of the considered opinion that there is enough evidence to show that "Amirtham Oil Company" is a Proprietorship Concern and the document filed to the respondents itself indicates the same. The impugned order is passed for the year 2014-2015 and during the year the "Amirtham Oil Company" is only Proprietorship concern and the petitioner is not liable to pay the same. Even according to the respondent the said L.Shanmugarajan and the petitioner had again constituted partnership firm from 01.05.2017 with TIN No. 33776493977. From this it is clear that the said L.Shanmugarajan and petitioner constituted fresh partnership firm and the previous partnership firm was dissolved. If there partnership is existing, another partnership firm is not necessary.

8. The next contention of the respondent is that the said L.Shanmugarajan has not responded to any of the notices of the respondents. It is only the petitioner is responding and had filed writ petitions, objections, participated in the personal hearing. This Court is of the considered opinion that this cannot be a ground to impose the tax and interest on the petitioner. It is only the said L.Shanmugarajan is liable for the same, but the said L.Shanmugarajan has not appeared or participated in any of the proceedings so far. Hence of course he may be entitled to one opportunity. Hence the respondents are at liberty to proceed with the said L.Shanmugarajan for collecting the tax arrears as per law.

9. For the reasons stated supra, the impugned order is liable to be quashed and accordingly, the impugned order, dated 30.03.2023 is hereby quashed. The respondent is at liberty to proceed against the said L.Shanmugarajan as per law.

10. With these observations and directions, these writ petitions are allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

21.09.2023

Index : Yes / No
Internet : Yes
ksa

To

The State Tax Officer,
Ramanathapuram Assessment Circle,
Ramanathapuram.

S.SRIMATHY. J

ksa

Common Order made in
W.P.(MD)Nos.9856 & 9857 of 2023

21.09.2023