BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P.(MD)No. 26742 of 2022
and
W.M.P.(MD) Nos. 20946, 20947 and 20950 of 2022

Dr.Prabakaran Karuppasamy ... Petitioner

Vs.

1.The State Tax Officer,
The State Tax Office,
Bodinayakanoor,
Theni District.

2.The State Bank of India,
Rep. by its Branch Manager,
MG Road Branch,
Branch Code (5778), Bangalore. ... Respondents

Petition filed under Article 226 of the Constitution of India, for issue of Writ of Certiorarified Mandamus, to call for the records on the file of the First Respondent pertaining to its proceeding bearing TIN.33095081096/2014-2015 for the assessment year 2014-2015 and the proceeding bearing No. TIN. 33095081096/2015-16 dated 12.10.2021 for the assessment year 2015-16 and the notice bearing No.TIN:33095081096/2021/A3 dated 19.11.2021 and to quash the same as illegal and consequently direct the Second Respondent to defreeze the account of the Petitioner PPF account No.30970879004 and saving account No.20029789876.

For Petitioner	:	Mr. S.C.Herold Singh
For Respondents	:	Mr. K.S.Selvaganesan Additional Government Pleader for R1

O R D E R

Heard Mr. S.C.Herold Singh, Learned Counsel for the Petitioner, and Mr. K.S.Selvaganesan, Learned Additional Government Pleader appearing for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. In view of the order proposed to be passed, which would not cause any prejudice to the Second Respondent, notice to it is dispensed with.

3. According to the Petitioner, he had been carrying on business in sole proprietorship under the name and style of Mrs. N.K.Prabakar Timber Company from the year 2004, but had closed down that business in the year 2008 and had shifted to Bangalore along with his family for employment. Long thereafter, his bank accounts with the Second Respondent have been freezed by the First

Respondent for arrears due towards sales tax. The Petitioner then sought for details from the First Respondent by a petition dated 16.09.2022 under the Right to Information Act, 2005. Since there was no response for the same, the Petitioner had filed the Writ Petition in W.P. No. 23571 of 2022 and this Court on 13.10.2022 had disposed that Writ Petition holding as follows:-

> *" 3. It is submitted by the learned Additional Government Pleader appearing for the 1st Respondent that the Petitioner would be furnished with copies of documents that are available and that the representation of the petitioner dated 27.09.2022 would also be considered.*
>
> *4. Recording the above submission, this Court is of the view that the 1st Respondent shall furnish all available documents out of 22 documents sought for by the Petitioner and shall also consider the Petitioner's representation dated 27.09.2022 and pass appropriate orders in accordance with law. It is made clear that this Court has not expressed any view with regard to the merits of the representation and it is open to the 1st Respondent to consider the same on its own merits."*

Thereafter, the First Respondent by Proceedings dated 04.11.2022 in ROC. No. 1334/2022/A1 replied to the queries raised by the Petitioner as extracted below:-

Sl. No	***Questions***	***Answers***
1.	Year of assessment for which proceedings were initiated	2014-15/ VAT, 2015-16/ VAT
2.	Intimation for payment of tax with regard to the aforesaid company under Section 1A of VAT Act	Intimation of Payment of Tax on 17.04.2017
3.	Mode of Service of Intimation under Section 1A of VAT Act	Through Indian Postal Service
4.	The person on whom the intimation under Section 1A of VAT Act was served	Notice served to Dr. Prabakaran Karuppasamy, Proprietor of N.K.Prabakar Timber Company
5.	Proof of Service of Intimation under Section 1A of VAT Act	Notice copy, Assessment order copy and your reply copy are enclosed.
6.	Copy of show cause notice, if any issued under Section 73/74 of VAT Act	Notice copy, assessment order Copy and your reply copy are enclosed.
7.	Mode of service of show cause notice under Section 73/74 of VAT Act	Through Indian Postal Service Dr.Prabakaran Karuppasamy Proprietor of N.K. Prabakar Timber Company
8.	The person on whom show cause notice served under Section 73/74 of VAT Act	Notice served to Dr.Prabakaran Karuppasamy proprietor of N.K.Prabakar Timber Company

Sl. No	Questions	Answers
9.	Proof of service of show cause notice served under Section 73/74 of VAT Act	Notice copy, Assessment order copy and your reply copy are enclosed.
10.	Copy of reply if any submitted to the show cause notice under Section 73/74 of VAT Act	Notice copy, Assessment order copy and your reply copy are enclosed
11.	Name of the Person who submitted the reply to the show cause notice under Section 73/74 of VAT Act	N.K.Prabakar Karuppasamy Proprietor of N.K.Prabakar Timber Company
12.	Date of submission of reply	15.05.2017
13.	Whether any personal hearing conducted?	Yes, personal hearing notice issued
14.	Date of conduct of personal hearing	Personal hearing date on 02.04.2021. But your not attend
15.	Copy of statement, if any recorded in the personal hearing	No
16.	Final orders, if any passed, if so, the copy of the final order	Final order copy enclosed
17.	Copy of order of Demand Notice	Copy of order and Demand Notice enclosed
18.	Mode of service of the final order	Through Indian Postal Service
19.	The person on whom service of the final order was made	Dr.Prabakar Karuppasamy Proprietor of N.K.Prabakar Timber Company
20.	Proof of service of the final order	Final order issued 2014-15, 2015-16 Dated :12.10.2021
21.	Further Demand Notice, if any issued, if so, copy of the same	Demand Notice issued on 19.11.2021

Sl. No	Questions	Answers
22.	Any other proceedings for documents related to the N.K.Prabakar Timber Company	No

It is the case of the Petitioner that none of the notices or orders relating to the assessment of sales tax for the years 2014-2015 and 2015-2016 had been served on him though it is claimed by the First Respondent to the contrary. In that backdrop, this Writ Petition has been filed challenging the Proceedings in TIN. 33095081096/2014-15 dated 12.10.2021 and TIN.33095081096/2015-16 dated 12.10.2021 passed by the First Respondent determining the liability of the Petitioner for sales tax under Value Added Tax Act, 2006, for the periods 2014-2015 and 2015-2016 aggregating to Rs. 38,28,624/-.

4. Despite opportunities granted, the First Respondent has not been able to place any material showing that the show-cause notices, notices for personal hearing and the final orders determining liability for tax had been served to the Petitioner in this case. It is mentioned by the First Respondent that the Petitioner has filed his objections to the show-cause notices by letter dated 15.05.2017 stating that he has not purchased goods from Tvl. SKI Timbers, Salem and Tvl K.D. Timbers and Plywood, Salem and he had sent legal notices to them through his Advocate with a copy to the First Respondent and

no reply has been received supported by documentary evidence, but it is asserted by the Petitioner in this Writ Petition that he had not sent any such letter or legal notice as stated therein. Further, in the memo dated 23.01.2023 filed by the First Respondent, it is stated that the notices of the assessment order has been pasted in front of the house of the Petitioner on 18.10.2021 as the door was locked as there was no one at that address given by the Petitioner.

5. At this juncture, it must be recapitulated that Section 27 of the General Clauses Act, 1897, postulates that where a Central Act or Regulations authorized or requires any document to be served by post, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. As already pointed out, inasmuch as no material has been shown for having actually handed over the show-cause notices, notices for personal hearing and the final orders determining liability for tax to the Petitioner, the application of that rule of deemed service cannot be invoked in this case. Moreover, the pasting of the notices of the final order at the door of the premises at the last known address of the Petitioner cannot be accepted without

taking any effort to serve the same by registered post. The only possible inference that could be drawn from this incontrovertible fact situation is that the impugned proceedings determining the liability of the Petitioner for tax for the periods 2014-2015 and 2015-2016 under the value added tax, which is in apparent violation of the principles of natural justice, cannot be sustained and have to be set aside. However, in view of the failure of the Petitioner to inform the First Respondent about the change of his address, which has caused protraction of the matter, he is liable to pay costs of Rs. 50,000/- as a condition to set aside each of the impugned orders and the said amount has been paid by the Demand Draft Nos. 001776 and 001777 dated 30.01.2023, which have been received by the Respondents through their Counsel in Court today. The Petitioner has further undertaken to promptly intimate the Respondents, if there is any change of his address in future and he has also made endorsement to that effect in the court record.

6. The result of the foregoing discussion is that the following order is passed:-

(i) the impugned orders in TIN. 33095081096/2014-15 and TIN. 33095081096/2015-16 dated 12.10.2021 passed by the First Respondent are set aside and the matter shall be determined afresh from the stage of sending reply to the show-cause notices dated 12.10.2021, copies of which have been received by the Petitioner in Court today;

(ii) the Petitioner shall submit his explanation with supporting documents to the show-cause notices dated 12.10.2021 within 15 days from the date of receipt of a copy of this order;

(iii) in the event of not being satisfied with the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner and all other persons concerned to explain their position in that regard;

(iv) a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated by 30.09.2023 under written acknowledgment; and

(v) the report of such compliance shall be filed before the Registrar (Judicial) of this Court.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

01.02.2023

Index : Yes/No
Internet : Yes /No

PKN

Note : Issue copy of the order by 22.06.2023

To

The State Tax Officer,
The State Tax Office,
Bodinayakanoor,
Theni District.

Copy to

1. The Registrar (Judicial),
   Madurai Bench of Madras High Court,
   Madurai – 625023.

2. Dr. Prabakaran Karuppasamy,
   S/o. N.Karuppasamy,
   J003 Nandi Citadel,
   Noble Residency Road,
   Akshayavana,
   Chandrasekarapura,
   Bangalore – 560076,
   Karnataka.

P.D. AUDIKESAVALU, J.

PKN

3.The State Bank of India,
Rep. by its Branch Manager,
MG Road Branch,
Branch Code (5778), Bangalore.

W.P.(MD)No. 26742 of 2022

Dated : 01.02.2023