IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.No.15808 of 2003

N.S.M.Mohamed Farook .. Petitioner

vs

1.The Registrar,
Tamil Nadu Taxation Special Tribunal,
Singaravelar Maaligai,
Rajaji Salai, Chennai – 600 001.

2.The State of Tamil Nadu
Rep. by its Secretary to Government
Commercial Taxes Department,
Fort St.George,
Chennai- 600 009.

3.The Commercial Tax Officer,
Mailam Chandhai I Assessment Circle,
Multistoried Building,
Khajamalai, Trichy – 20.

4.The Deputy Commercial Tax Officer,
Pattukkottai II Assessment Circle,
Pattukkottai, Thanjavur District.

5.M/s. Hindustan Domestic Oil & Gas Company
(Bombay) Ltd.,

Rep. by its Managing Director,
708, Building No.3, Navjeevan Commercial Complex,
7th Floor, Laminghton Road,
Mumbai – 400 008. ... Respondents
(R5 impleaded vide order dt 23.12.11
by PJMJ & SVJ in WPMP 674/11 in WP 15808/03)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records of the 1st Respondent in O.P.No.937 of 2002 dated 25.02.2003 and the connected proceedings of the 4th Respondent in Na.Ka.2329/02/A3 dated 5.8.2002 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mr.TNC. Kaushik, (for R1 to R4)
Additional Government Pleader
Mr.S.Rajasekar for R5

ORDER

(Order of the Court was made by Dr.ANITA SUMANTH.,J)

The petitioner is one N.S.M.Mohamed Farook. He had filed an application in Form-D before the Commercial Tax Officer seeking registration of an entity by name *'Hindustan Domestic Oil and Gas Company (Bombay) Limited'*. The status of the aforesaid entity in that application was stated as ‘proprietorship’.

2. A certificate of registration was issued in Form D-1. Our attention is drawn to an endorsement on Form-D-1 to the effect that the said N.S.M.Mohamed Farook is a special power of attorney of the entity aforesaid.

3.Mr.S.Rajasekar, learned counsel who appears for a Company by the name '*Hindustan Domestic Oil and Gas Company (Bombay) Limited*' (impleaded as the fifth respondent in the writ petition vide order dated 23.12.2011) states that the application for registration had, in fact, been filed by R5 and that there was an inadvertent error in the application form as regards the status of the entity seeking registration.

4.The present writ petition has been instituted challenging a demand under communication bearing Na.Ka.No.2329/02/A3 dated 05.08.2002 holding the petitioner liable for arrears under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act'), to an extent of Rs.25,53,555/-.

5.The case of the petitioner all along has been that he has no connection with the arrears as he is only a power of attorney holder of R5. The Tribunal, by way of impugned order dated 25.02.2003, has rejected the explanation of the petitioner upholding the demand made.

6.Today, on instructions, Mr.Rajasekar has filed a memo, reading as follows:

> *'The above named 5th Respondent / Impleaded Party Respondent begs to submit as follows:*
>
> *(1) The petitioner named above has challenged the recovery notice issued in his name by way of this writ petition stating that he acted as a Power Agent for the 5th Respondent/Company and the arrears pertain to the dues payable by the Company for proceedings in respect of assessments under TNGST Act, 1959 & CST Act, 1956 for 1999-2000 and 2000-01 and TNGST 1998-99 (5 years)*
>
> *(2) The 5th Respondent being in a sick status has been in and out of BIFR and AIFR proceedings and is still struggling with financial problems and therefore seeks a humble prayer to challenge the assessment proceedings pertaining to the demand raised in the name of the company before the appellate forum.*
>
> *(3) hence it is therefore respectfully prayed that this Hon'ble Court may be pleased to permit the 5th Respondent to challenge the proceedings pertaining to the above demands before the Appellate Authority.'*

7.R5 thus accedes to the position that it is an arrears of Commercial Taxes of a sum of Rs.52,74,692/-, of which Rs.25,53,555/-, which is the impugned demand as against the petitioner, is part. The demand of Rs.25,53,555/- relates to demands under the Tamil Nadu General Sales Tax Act, 1959 for the years 1998-99 and 1999-2000 and the Central Sales Tax Act, for the period 19561999-2000.

8.The reminder relates to demands for the periods 2000-2001, both under the provisions of the Tamil Nadu General Sales Tax Act and Central Sales Tax Act. Pending this writ petition, a notice of attachment in Form No.5, in terms of Section 27 has been issued in respect of the total demand of Rs.52,74,692/- (page 175 of the appeal set).

9.Thus, it is now clear that the impugned demand ought to have been raised in the name of R5 and the recovery proceedings in the name of the writ petitioner are misconceived.

10.The findings of the Tribunal at paragraph 9 are thus liable to be reversed in view of the memo filed by learned counsel for the petitioner. R5 has also filed letter dated 02.09.2024 acceding to the arrears as above, extracted as follows:

> *'We are in arrears for the following assessment years that forms part of the Attachment order issued in the name of our Power Agent – Mr.N.S.M.Mohammed Farook.*

S.No.	*Assmt Year & date*	*Balance Demand payable (Tax & Penalty)*
1	*TNGST 1998-99/17.01.2002*	*Rs.3,99,175/-*
2	*TNGST 1999-2000/17.01.2002*	*Rs.13,45,816/-*
3	*CST 1999-2000/17.01.2002*	*Rs.8,66,947/-*
4	*TNGST 2000-01/27.08.2002*	*Rs.8,83,639/-*
5	*CST 2000-01/27.08.2002*	*Rs.4,93,294/-*

> *We wish to inform you that the Company is in a huge financial stress and has been in and out of BIFR and AIFR*

and therefore request you to see if the above demands in respect of the above assessment years can be legally challenged before the Appellate Authority.
Therefore, kindly seek your assistance in the above matters.
Thanking you,
Yours truly,
For Hindustan Domestic Oil & Gas Co. (B) Ltd.
Director'

11.There is some difference in the demands, as quantified by the assessee and under the notice of attachment dated 24.04.2003. We leave the reconciliation thereof to the authorities concerned.

12.By consent, the parties agree that since the impugned demand ought to have been raised in the name of R5, R5 may be permitted to challenge the assessments giving rise to the aforesaid demands.

13.Hence, R5 is given liberty to challenge the orders of assessments as relating to the impugned demand within a period of six (6) weeks from date of receipt of a copy of this order. If so filed, the appeals shall be taken on file by the Assessing Authority without reference to limitation, but ensuring compliance with the requirement of all statutory conditions including pre-deposit.

14.The impugned attachment will continue till such time the Appellate Assistant Commissioner before whom the appeals are to be instituted, verifies the remittance of pre-deposit by the Company. He may, after ensuring that the requisite pre-deposit has been made, lift the attachment made in the name of the petitioner. He is given liberty to impose such additional conditions upon the Company as a pre-condition to lifting the attachment, if he so believes appropriate.

15.This writ petition is disposed in the aforesaid terms. No costs.

[A.S.M., J]   [G.A.M., J]
02.09.2024

Index:Yes
Speaking order
Neutral Citation:Yes
vs

To

1.The Registrar,
Tamil Nadu Taxation Special Tribunal,
Singaravelar Maaligai,
Rajaji Salai, Chennai – 600 001.

2.The Secretary to Government,
Commercial Taxes Department,
Fort St.George,
Chennai- 600 009.

3.The Commercial Tax Officer,
Mailam Chandhai I Assessment Circle,
Multistoried Building,

Khajamalai, Trichy – 20.

4.The Deputy Commercial Tax Officer,
Pattukkottai II Assessment Circle,
Pattukkottai, Thanjavur District.

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

vs

W.P.No.15808 of 2003

02.09.2024