IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.02.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.4986 of 2024
&
WMP Nos.5474 of 2024

M/s.K.R.K.Enterprises,
rep. By its Proprietor,
Mr.Balasubramani Nanjai Karthick
No.91,Gandhi Nagar,
Now at Murugan Apartments,
Opposite to TSP School,
N.S.Puram, Attur 636 108. ... Petitioner

vs

The State Tax Officer,
Attur (Town) Circle,
Integrated Sales Tax Complex,
Thennangkudi Palayam 636 108. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari to call for the records of the respondent in TIN:33503142083/2016-17 dated 02/06/2023 and the consequential order of rectification passed in TIN:33503142083/2016-17 dated 12/10/2023 quash the same.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mrs.K.Vasantha Mala,
Government Advocate (Taxes)

ORDER

Both a reassessment order dated 02.06.2023 and an order 13.07.2023 rejecting a rectification petition are challenged.

2. The petitioner was a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and was a trader of snacks and fast moving customer goods and cigarettes. He filed returns for the assessment year 2016-17 and reported a total turnover of Rs.22,28,99,116/- and a taxable turnover of Rs.4,99,15,458/-. Pursuant to the filing of an audit report on 23.12.2016, reassessment proceedings were initiated. Upon receipt of a notice dated 30.11.2022 and a reminder dated 17.05.2023, the petitioner issued a reply dated 27.05.2023. Along with the said reply, the petitioner enclosed a break-up of opening stock and closing stock depending on the tax rate. He also enclosed a sample stock record and asserted that such

stock records were being maintained properly. An assertion was made that freight charges were not being incurred because the goods were delivered to the place of business of the assesee. After setting out the explanation, the petitioner requested that the proposals initiated by the assessing officer be dropped. The impugned order of reassessment was issued thereafter.

3. The said order refers to the reply dated 27.05.2023. Out of the five issues dealt with therein, except for the issue relating to the receipt of Rs.5,20,490/- as interest on bank deposits, on all other issues, the assessing officer held against the petitioner. In rectification proceedings, the State Tax Officer concluded that there are no errors apparent and that therefore the rectification petition is not sustainable. The present writ petition was filed in these circumstances.

4. Learned counsel for the petitioner invited my attention to the documents at pages 94 and 95 of the typed set of papers to contend that the entire amount due towards tax was appropriated by way of a bankers cheque issued by the petitioner's banker, State Bank of India. Therefore, he points out that revenue interest is fully protected at this juncture. He also points out that the petitioner's main trade was in cigarettes and that no taxes are leviable on second sales as per sub-section 5 of Section 3 of the Tamil Nadu Value Added Act, 2006 read with Sl.No.13 of the II Schedule thereto. Therefore, he points out that there is no revenue loss. By also referring to the reply of the petitioner, he pointed out that the petitioner did not have the opportunity to persuade the assessing officer and that, if provided another opportunity, all relevant documents would be placed before the assessing officer.

5. In response to these submissions, Mrs.Vasantha Mala, learned Government Advocate, submits that the rectification petition

was rejected because the State Tax Officer was of the view that there were no errors apparent. As regards the reassessment proceedings, she submits that the petitioner did not avail of the opportunity of a personal hearing so as to persuade the assessing officer.

6. At the outset, it should be noticed that a sum of Rs.3,42,347/- was appropriated towards discharge of tax liability under the impugned reassessment order. Consequently, at this juncture, revenue interest has been fully protected. The records show that the petitioner was not heard before the impugned reassessment order was issued although the petitioner's reply appears to have been taken into consideration. Learned counsel for the petitioner asserts that all relevant documents are available with the petitioner and that, if provided an opportunity, the petitioner would be able to convince the assessing officer to reconsider the demand. For the purpose of providing another opportunity to the petitioner, I am inclined to interfere with the impugned reassessment order.

7. Therefore, the impugned reassessment order is quashed and

the matter is remanded for reconsideration by the assessing officer. The assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a maximum period of three months from the date of receipt of a copy of this order. For the avoidance of doubt, it is made clear that the sum of Rs.3,42,347/-, which was appropriated pursuant to the reassessment order, shall be retained subject to the outcome of the remand proceedings. The petitioner is permitted to raise additional objections in respect of the demand provided such objections are raised within 15 days from the date of receipt of a copy of this order.

8. W.P.No.4986 of 2024 is disposed on the above terms. Consequently, connected miscellaneous petition is closed. No costs.

29.02.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The State Tax Officer,
Attur (Town) Circle,
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SENTHILKUMAR RAMAMOORTHY J.

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