IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9563 of 2022
and
W.M.P.No.28376 of 2023

M/s.Vikas Automobiles,
Rep.by its Proprietor,
M.C.Arulraj,
No.124/A, I floor, Kamarajar Salai,
Opp. To Periyar Statue, Pillaithottam,
Puducherry – 605 013. ... Petitioner

Versus

Additional Deputy Commercial Tax Officer – II,
100 Feet Road, Ellaipillaichavadi,
Puducherry – 605 005. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Mandamus directing the respondent to complete the adjudication proceedings in Notice dated 7.03.2018 issued from file TIN 34090023839/ADCTO-II/2016-17 within a time frame fixed by this Court.

Amended Prayer : To amend the prayer in the present Writ Petition as Writ of Mandamus, directing the respondent to refund the sum of Rs.22,44,000/- collected under coercion along with reasonable interest and complete the assessment proceedings as per the scope of Section 6A(2) of the Central Sales Tax Tax Act, 1956 arising from file TIN.34090023839/ ADCTO-II/2016-17 dated 07.03.2018 within a time frame fixed by this Court.

(Prayer amended as per order dated 08.11.2023 in W.M.P.No.28372 of 2023)

For Petitioner : Mr. P. Jitendrakumar,
for Mr. K. Senguttuvan

For Respondent : Mr. J. Kumaran,
Additional Government Pleader, (Pondicherry)

ORDER

The petitioner seeks a direction for the completion of adjudication proceedings pursuant to notice dated 07.03.2018 and for a refund of a sum of Rs.22,44,000/- which was allegedly collected under coercion.

2. The petitioner states that he is involved in the business of automobile spare parts trading. In relation to stock transfers, he states that he is required to produce Forms-F so as to avail the benefit of exemption. For the assessment year 2016-2017, the petitioner has transferred goods to his agent in another State. Upon receipt of a notice dated 07.03.2018, the petitioner states that Forms-F were submitted on 26.06.2018. Meanwhile,

it is stated that the petitioner was coerced into paying a sum of Rs.22,44,000/- towards tax liability under the Puducherry Value Added Tax Act. The petitioner also points out that additional documents were submitted by enclosing the same with communication dated 27.07.2021 and that such communication bears the acknowledgment of the respondent. In these circumstances, the present writ petition was filed.

3. Learned counsel for the petitioner relies on the letter dated 26.06.2018 to assert that Forms-F were submitted. He also relies on the letter dated 27.07.2021 and points out that several documents were enclosed with such letter and that the same is evident on examining the letter. He also refers to the acknowledgment of the respondent with regard to the receipt of five volumes of spiral bound documents.

4. Learned Additional Government Pleader appears on behalf of the respondent. He refers to the counter and points out that there was a discrepancy between the turnover of Rs.12,47,50,000/- as the stock transfer value as per CST Form-I for the year 2016-2017 and the Forms-F submitted later for the value of Rs.14,42,15,400/-. In those circumstances,

he submits that the petitioner was directed to produce documents to establish that the Forms-F produced by him were genuine. He further submits that the petitioner failed to produce details of commission paid and connected bank statements, details of returns filed and tax paid by the consignee, purchase bills and sales bills. Without these documents, he submits that the respondent cannot verify the genuineness of the Forms-F.

5. The submissions of learned Additional Government Pleader are countered by learned counsel for the petitioner by referring to the letter dated 27.07.2021. He points out that all these documents were provided and that receipt thereof was acknowledged. On instructions, learned Additional Government Pleader maintains that the petitioner has not provided documents such as authorization in Form SS, Form JJ and details of tax paid by his consignee.

6. The limited relief prayed for is for the conclusion of the assessment proceedings in expeditious fashion. While the petitioner has also prayed for refund, a mandamus cannot be issued in these circumstances directing refund. However, upon conclusion of the

assessment proceedings and depending on the outcome thereof, the petitioner may or may not be entitled to refund. This is a matter to be decided by the assessing officer.

7. Accordingly, the respondent is directed to conclude the assessment proceedings relating to the petitioner within a maximum period of two months from the date of receipt of a copy of this order. It is open to the petitioner to submit any additional documents for such purpose provided such documents are submitted within 15 days from the date of receipt of a copy of this order. In relation to such assessment proceedings, the petitioner shall be provided a reasonable opportunity, including a personal hearing. Since assessment proceedings have not been concluded, the order of attachment of the petitioner's bank account is raised by leaving it open to the respondent to initiate proceedings for recovery, including by coercive action, if the assessment proceedings culminate in the confirmation of tax demand against the petitioner. It is needless to say that any such proceedings shall be undertaken in accordance with law.

8. The Writ Petition is disposed of on the above terms. Consequently, connected miscellaneous petition is also closed. No costs.

05.03.2024

Index : Yes
Speaking Order : Yes
Neutral Case Citation: Yes

klt

To

The Additional Deputy Commercial Tax Officer – II,
100 Feet Road, Ellaipillaichavadi,
Puducherry – 605 005.

SENTHILKUMAR RAMAMOORTHY,J

klt

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