IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.11780 of 2022
and
W.M.P.No.11239 of 2022

Sukumar Traders
Rep by its Proprietor
Mr.K.Nagaraju
No.171, Vivekananda Nagar, 2nd Street,
Gummidipoondi – 601 201. ... Petitioner

Vs.

1.The Commercial Tax Officer,
Gummidipoondi Assessment Circle,
Room No.113, I Floor,
Integrated Commercial Taxes Building,
Waltax Road,
Chennai – 600 003.

2.The Superintendent of Police,
Thiruvallur District,
Tiruttani Main Road,
Tiruvallur – 602 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the 1st respondent passed in TIN 33441703412/2016-17 dated 26.11.2021 (Certified copy dated 21.04.2022) and consequential recovery notice in TIN/33441703412/2016-17 dated 18.02.2022 and quash the same and further direct the 2nd respondent to conduct an inquiry into the alleged fraud played.

For Petitioner : Mr.P.V.Ravi Kumar

For Respondents : Mr.C.Harsharaj
Additional Government Pleader

ORDER

In this writ petition, the petitioner has challenged the impugned Assessment order dated 26.11.2021, wherein, demand has been confirmed against the petitioner for a sum of Rs.18,16,522/- together with penalty of Rs.9,08,261/- under Section 27(4)(1) of the TNVAT Act, 2006.

2. The specific case of the petitioner is that the petitioner was unable to carry on the business and therefore decided to close the business and had taken steps to surrender the VAT registration by

tendering a letter with the office of the first respondent on 25.12.2014, which has been acknowledged by the office of the respondent on 25.12.2014, wherein, the petitioner had surrendered the original copy of the Registration Certificate under VAT No.33441703142 and CST No.896586 with a request to cancel the VAT registration.

3. In the affidavit, it is further stated that the demand has been confirmed for the period mentioned after the surrender of the VAT and CST Registration on 25.12.2014 for the Assessment Year 2016-2017 and somebody else had misused the Login ID of the petitioner, after the petitioner had cancelled the registration. After the receipt of the impugned order, the petitioner appears to have sent a complaint to the second respondent requesting the second respondent to investigate and to initiate steps to find out as to who could to have utilised the Login ID of the petitioner for transacting with the petitioner's VAT and CST registration and file a return to facilitate wrongful availing of input tax credit for the aforesaid sum of Rs.18,16,522/-. The aforesaid demand has been confirmed on account of purchase of goods from registration under Section 19(15) of the TNVAT Act, 2006.

4. At the time of admission, this Court had directed the second respondent to give a status report regarding the steps taken for investigation into the complaint of the petitioner. A status report has also been filed by the second respondent, wherein, it has been stated that enquiry in CSR.No.214/2022 has been initiated and the same will be furnished in due course. However, so far, no other report has been filed by the respondents. On behalf of the First respondent/Commercial Tax Department, two counter affidavits have been filed, one in the name of Mr.V.Kathiravan, Assistant Commissioner (ST), Gummidipoondi Assessment Circle dated 06.07.2022, which has been signed by him and another counter affidavit filed by one G.Kumaresan from the office of the Assistant Commissioner (ST), Gummidipoondi Assessment Circle dated 19.06.2024.

5. A reading of these two counter affidavits and also letter of the petitioner which has been enclosed at Page No.27 seems to indicates that the said letter was sent on 25.12.2014 which accompany an acknowledgement in the Letter Delivery Book which is also dated

25.12.2014. It is highly implausible for the petitioner to have un-delivered such a letter on 25.12.2014 as the said date is a holiday it being Christmas day and also highly unlikely an acknowledgement also would not have been given on 25.12.2014 being a holiday. Therefore, *prima facie* there are indications that there is no truth in the submissions of the petitioner that on 25.12.2014, a letter would have been issued by the petitioner and acknowledged by the respondent in the petitioner's Letter Delivery Book on the same day. Therefore, the challenge to the impugned order on the ground that the petitioner had surrendered the registration under TNVAT Act, 2006 and CST Act, 1956 cannot be accepted. In any event, whether indeed transaction was carried out by the petitioner during the period in dispute in the year 2016-2017 or not is to be verified from the electronic file and IP address which the Department will have in its possession.

6. Under these circumstances, this Writ Petition is disposed of by directing the respondents to verify as it from which IP address the transactions were made by for filing returns in the name of the petitioner, during the period in dispute which has facilitated wrongful availing of the

input tax credit and passing thereof to unscrupulous dealers. The first respondent is directed to carry a forensic examination of its records and furnish the same to the petitioner and thereafter pass a fresh order on merits and in accordance with law. Since the dispute also arises under the provisions of the Information Technology Act, 2000, the first respondent/Commercial Tax Department is directed to take the assistance of the Cyber Crime Cell of the State of Tamil Nadu.

7. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected writ miscellaneous petition is closed.

20.11.2024

Index:Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

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Room No.113, I Floor,
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Chennai – 600 003.

2.The Superintendent of Police,
Thiruvallur District,
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C.SARAVANAN, J.

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