IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.25225 and 25228 of 2021
and
W.M.P. Nos. 26597, 26598, 26599 and 26601 of 2021

M/s.Richy Rich,
Represented by its Partner
Mr.R.R.Kumar, No.2, 2nd Floor,
Captain Marius Xavier Street,
Puducherry-605 001. ... Petitioner in both W.P.'s

Vs.

1.The Additional Deputy Commercial Tax Officer (IAC),
Puducherry Assessment Circle,
Puducherry – 605 001.

2.The Commercial Tax Officer,
Enforcement & Intelligence Wing,
Office of the Commissioner – State Tax
Government of Puducherry. ... Respondents in both W.P's

PRAYER in W.P.No.25225 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the 1st Respondent in VAT/34610020255/2015-16 dated 25.01.2019 and quash the same as passed without issuing a show cause notice and granting an opportunity to the petitioner to file objections as contemplated under the provisions of the Puducherry Value Added Tax Act, 2007 and therefore contray to law and against the principles of natural justice and further direct the first respondent to pass a fresh assessment order in accordance with law after granting reasonable opportunity to the petitioner.

PRAYER in W.P.No.25228 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the 1st Respondent in VAT/34610020255/2016-17 dated 24.09.2019 and quash the same as passed without issuing a show cause notice and granting an opportunity to the petitioner to file objections as contemplated under the provisions of the Puducherry Value Added Tax Act, 2007 and therefore contrary to law and against the principles of natural justice and further direct the first respondent to pass a fresh assessment order in accordance with law after granting reasonable opportunity to the petitioner.

For Petitioner in both W.Ps.	: Mr.P.Rajkumar
For Respondents in both W.Ps.	: Mr.R.Sreedhar Additional Government Pleader (Pondicherry)

COMMON ORDER

These two writ petitions are filed challenging the orders of assessments under the Puducherry Value Added Tax Act, 2007 (hereinafter referred to as "the Act") for the assessment years 2015-16 and 2016-17 on the premise that the same has been completed without even issuing a show cause notice to the petitioner contrary to Section 24 of the Act which provides that no assessment shall be made without the grant of reasonable opportunity and thus a nullity.

2. Brief facts:

The petitioner is a manufacturer and dealer of ice-creams and other food items such as pizzas, snacks, juice etc. The petitioner was a registered dealer on the file of the 1st Respondent under the PVAT Act. The petitioner had reported a total and taxable turnover of Rs.2,94,84,581/- and Rs.3,33,17,512/- for the assessment year

2015-16 and 2016-17 respectively. There was a scrutiny of the accounts of the petitioner which allegedly revealed that the petitioner had claimed excess input tax credit and there were certain issues including rate of tax applicable on the sales of mayonnaise. There was an inspection of the petitioner's place of business, certain discrepancies in the sales of cooked food and ice creams were allegedly noticed during the course of inspection. The Respondents proceeded to pass the impugned orders of assessment reversing the input tax credit, while levying high rate of tax on the sales of Mayonnaise and adding the difference in the turnover allegedly noticed with regard to sales of ice creams.

3. The impugned orders of assessment does not refer to any show cause notice having been issued in respect of the above discrepancies/ infirmities to enable the petitioner to respond. Importantly, the counter that has been filed does not in any manner dispute the factum of non-issuance of show cause notice. On the other hand, the maintainability of the writ petitions are challenged on the premise that an alternate remedy by way of appeal is available and the writ petition is filed after a lapse of two and half years.

3.1. It may be relevant to refer to Section 24(6) of the Act which has apparently been invoked in making the orders of assessment and the same reads as under :

"24....

(6) Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false invoice, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the Assessing Authority shall, at any time, within a period of five years from the end of the year to which the return relates, reverse input tax credit availed and determine the tax due after making such an enquiry as it may consider necessary:

Provided that no order shall be passed under this sub section without giving the dealer a reasonable opportunity to show cause against such order."

3.2. A reading of the above provision would show that no order shall be passed under the Section without giving the dealer a reasonable opportunity to show cause. However, concededly the impugned orders of assessment have been made without issuing a show cause notice thus in gross violation of the mandate contained in Section 24 of the Act and thus a nullity.

4. This Court is conscious of the fact that writ petition under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is available. However, existence of alternate remedy is not an embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India. The impugned orders are made in violation of principles of natural justice and thus falls within the exceptions carved out to the rule of alternate remedy for entertaining writ petition under Article 226 of the Constitution of India.

5. Insofar as the submission of the Respondents that there has been a delay in challenging the assessment, it must be noted that there is no limitation for filing a writ petition and Courts while exercising its discretion under Article 226 of the Constitution of India would look to find if there has been laches/ gross negligence in approaching the Court belatedly. In the present case, the petitioner had explained the reasons for the delay in approaching this Court under Article 226 of the Constitution of India, in the affidavit filed in support of the writ petition, the same reads as under:

> *"11. I state that soon after the petitioner received the impugned orders dated 24.1.2019 and 24.9.2019, immediately through its Auditor Late Mr.V.Anantharaman approached the first respondent and requested him to withdraw the same as there was no opportunity granted to the petitioner before the impugned orders were passed. The petitioner stressed on the fact that there was blatant violation of principles of natural justice in passing the impugned orders and also there was the reasonable opportunity as contemplated under the provisions of the PVAT Act, 2007 were not followed and requested the first respondent to pass a fresh assessment order after granting an opportunity to them. But however the first respondent did not consider the oral submissions made by the petitioner to reopen the assessment and grant a fresh opportunity. The petitioner's auditor was holding the entire files of the petitioner and was frequently visiting the office of the first respondent with a request to reopen the assessment inspite of his ill health. In other words, the petitioner's auditor Mr.V.Anantharaman was taken to serious illness but inspite of the same, he was in constant touch with the first respondent to reopen the assessments made without granting opportunity to the petitioner. Unfortunately Mr.V.Anantharaman, the auditor of the petitioner passed away on 19.12.2019 and thereafter the petitioner collected all the papers from his office and approached the first respondent.*
>
> *12. I state that in the meantime, the pandemic struck in the month of March 2020 and subsequently lock down was announced by the Central and State Governments. As there was long silence from the first respondent as to the request of the petitioner to reopen the impugned assessment orders, the Petitioner left with no remedy against the impugned orders decided to file applications for rectification of the orders. The applications dated 7.5.2021 under section 73 of the PVAT Act, 2006 were filed by the petitioner before the first respondent seeking for rectification/reopening of the assessment orders dated 25.1.2019 and 24.9.2019 for the assessment years 2015-2016 & 2016-2017 respectively, grant opportunity to the*

petitioner by issuing show cause notice and then pass fresh assessment order in accordance with law.

13. I state that even though the first respondent received the applications dated 7.5.2021, there was no response from his side. So the petitioner sent a reminder dated 5.7.2021 to the first respondent requesting to consider their applications dated 7.5.2021. The first respondent issued notices dated 23.7.2021 fixing the personal hearing on 4.8.2021 to decide and dispose of the application dated 7.5.2021 filed by the petitioner for the assessment years 2015-2016 and 2016-2017. In the above notices, the petitioner was called upon to produce the following records which included the income tax returns filed for the years 2015-2016 & 2016-2017, the details of pending income tax proceedings in respect of the petitioner and the copies of the communication received from the income tax department in respect of the said proceedings and reply furnished to those communications.

14.1 state that in response to the notices dated 23.7.2021 from the first respondent fixing the personal hearing on 4.8.2021, the petitioner appeared for the personal hearing along with the separate letters dated 4.8.2021 and the documents requested by the first respondent for the assessment years 2015-2016 & 2016-2017. Further the petitioner also filed certain additional documents before the first respondent on 9.8.2021. During the personal hearing on 4.8.2021 and on 9.8.2021 when the petitioner filed additional documents, the first respondent informed the petitioner that he would record a statement from the petitioner. But no statement was recorded from the petitioner till today by the first respondent even though the same is not required as per the provisions of the PVAT Act, 2007 while considering an application filed under section 73 of the PVAT Act, 2007.

15.1 state that since that the first respondent did not respond after 9.8.2021, the petitioner sent a letter dated 2.9.2021 through registered post. The same was received by the first respondent, but till today, the assessment order dated 25.1.2010 passed for the year 2015-2016 and the assessment order dated 24.9.2019 for the year 2016-2017 have not been reopened/rectified and a fresh assessment order passed."

6. While this Court is conscious of the fact that though law of limitation does not strictly apply to the writ petitioner, nevertheless Courts would be loathe in permitting writ petitions after inordinate and unexplained delay or laches. Though the same by itself may not be an absolute impediment to exercise judicial discretion and rendering of substantial Justice. From a reading of the above paragraph

extracted from the affidavit filed by the petitioner this Court is satisfied with the explanation for the delay in approaching this Court. Importantly, the orders having been made in complete disregard to the mandate contained in Section 24 of the Act, the impugned orders of assessment are a nullity and thus liable to be set aside. The petitioner would treat the impugned orders of assessment as show cause notice and submit its objections within a period of 4 weeks from the date of receipt of a copy of this order and the Respondents shall proceed to complete the assessment within a further period of 12 weeks from the date of receipt of objections. In the event the petitioner fails to submit its objections within the period stipulated herein i.e., 4 weeks from the date of receipt of a copy of this order, the orders of assessment will stand restored and it shall be open to the Respondents to proceed in accordance with law.

7. The writ petitions stand disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

23.02.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
mka

To:
1.The Additional Deputy Commercial Tax Officer (IAC),
Puducherry Assessment Circle,
Puducherry – 605 001.

2.The Commercial Tax Officer,
Enforcement & Intelligence Wing,
Office of the Commissioner – State Tax
Government of Puducherry.

MOHAMMED SHAFFIQ, J.

mka

W.P. Nos.25225 and 25228 of 2021
and
W.M.P. Nos. 26597, 26598,
26599 and 26601 of 2021

23.02.2024