BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.724 of 2021
and
W.M.P.(MD) No.603 of 2021

M/s.Sri Rajathi Enterprises,
Represented by its Proprietor
R.Varthamanan,
14A/2469, Gopal Mudaliyar Lane,
Ellaiamman Koil Street,
Thanjavur. ... Petitioner

Vs.

The Commercial Tax Officer,
Thanjavur II Assessment Circle,
Commercial Tax Building,
Thanjavur. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records in TIN33033822554/2013-14 dated 23.11.2020 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice.

For Petitioner : Mr.S.Karunakaran

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The petitioner is aggrieved by the impugned order dated 23.11.2020 passed by the respondent confirming the demand for the Assessment Year 2013-14.

2. It is the specific case of the petitioner that the petitioner closed down the business as early as 31.03.2011 and surrendered VAT registration with the respondent. It is submitted that after closure of its business, the respondent issued a revision notice dated 26.02.2018 and thereafter, another notice dated 08.07.2020 to which the petitioner has replied. It is submitted that in the notices, the petitioner was informed that the petitioner had effected sale to buyers during the Assessment Year 2013-2014 and the information was culled out from MIS report generated with intranet web domain maintained by the Commercial Tax Department.

3. The learned counsel for the petitioner submits that in the reply to the respective notices issued to the petitioner on 26.02.2018 and 08.07.2020, the petitioner has called upon the respondent to not only to furnish the invoices but also to produce the details of the so-called

purchasers to whom the petitioner is alleged to have effected sale during the Assessment Year 2013-2014. He further submits that the proprietor of the petitioner was aged about 77 years when this Writ Petition was filed by him and that he had closed down the business in the year 2011 itself and therefore, was wrongly mulcted with the tax lability *vide* impugned order without following the principles of natural justice.

4. The learned counsel for the petitioner submits that the impugned order is contrary to the decision of this Court in the case of ***M/s.JKN Graphics Solutions Pvt Ltd.,*** *Vs.* ***Commercial Tax Officer, Veppery, Chennai,*** *(2017) 99 VST 343 (Mad)* and therefore, the impugned order is liable to be quashed.

5. On the other hand, the learned Additional Government Pleader for the respondent submits that this Writ Petition is devoid of merits. A specific reference was made to paragraph 10 of the counter affidavit, wherein, it has been stated that the details of all invoices and the details of purchasers were furnished to the petitioner, based on which, the demand has been confirmed.

6. The learned counsel for the petitioner by way of rejoinder submits that in the second mentioned notice dated 08.07.2020, the petitioner has been furnished only with the invoice numbers and not copies of the invoices. That apart, it is submitted that the respondent has not furnished the details of the so-called purchasers to whom the petitioner is alleged to have effected sale during the Assessment Year 2013-2014.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

8. In view of the materials on record, the impugned order is unsustainable as the impugned order fails to note the decision of this Court in the case of ***M/s.JKN Graphics Solutions Pvt Ltd.*** referred to *supra*. In somewhat similar circumstances, this Court in the case of ***M/s.Annalakshmi Traders*** *Vs.* ***The Assistant Commissioner (ST), Pollachi (East)***, *2022 (1) TM 806*, held as under:

9. It is noticed that the Principal Secretary/Commissioner of Commercial Taxes has issued the above-said Circular No.05 of 2021, LW10/12521/2016 dated 24.02.2021. It has spelt out the manner in which the issue has to be addressed and the Input Tax Credit availed has to be reconciled on the strength of the information gathered from the website of the Government.

10. Admittedly, in this case the respondent has not followed the procedure prescribed therein. Considering the same, I am inclined to interfere by quashing the impugned Assessment Order by remitting back the case to the respondent to pass a speaking order in terms of the above-said circular/guidelines of the Principal Secretary/Commissioner of Commercial Taxes.

11. The respondent is also directed to furnish the details of the invoices allegedly issued by the petitioner on the strength of which the purchasing dealer had supposed by availing Input Tax Credit. The above information shall be furnished to the petitioner within a period of thirty days from the date of receipt of a copy of this order. The petitioner shall thereafter file a fresh reply within a period of thirty days. The entire exercise shall be carried out by the respondent within a period of ninety days from the date of receipt of a copy of this order.

12. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

9. That apart, it is not in dispute that the information has been gathered by the respondent from MIS report generated with intranet web

domain. The fact that the petitioner has closed down the business and surrendered the VAT registration as early as 31.03.2011 is also not in dispute.

10. It is quite possible, the information gathered by the respondent from their intranet domain may give an indication that the petitioner's name could have been misused by a third party since the petitioner had closed down the business in 2011 and the invoices were issued to the buyers from Chennai at Sowcarpet and Muthailpet to pass on input credit to cause loss to the State Exchequer. The authorities ought to have investigated and produced the dealers for cross-examination by the petitioner, as otherwise, it is quite possible, liability is being fastened on the petitioner based on the information gathered from the intranet domain based on the fictitious and bogus invoices. The duty cannot be fastened on the petitioner if indeed the petitioner had closed down the business as early as 31.03.2011.

11. Considering the same, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order on merits and in accordance with law. It is made clear that the respondent shall furnish

copies of invoices said to have been raised by the petitioner on the dealers to whom the petitioner is alleged to have effected sale. The dealers shall also be produced for cross-examination if the petitioner desires. Copies of the invoices based on which the demand has been made in the impugned order may be furnished to the petitioner, within a period of 60 days from the date of receipt of copy of this order. The entire exercise shall be carried out by the respondent, within a period of 6 months from today.

12. Accordingly, this Writ Petition is allowed by way of remand. No costs. Consequently, connected Miscellaneous Petition is closed.

03.04.2024

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

JEN

Copy To:

The Commercial Tax Officer,
Thanjavur II Assessment Circle,
Commercial Tax Building,
Thanjavur.

C.SARAVANAN, J.

JEN

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