BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) Nos.15582 to 15586 of 2024
and
W.M.P.(MD) Nos.13632, 13639, 13646, 13636 and 13638 of 2024

Tvl.Fe.Nerve Building,
rep. by Proprietor
M.Balamurugan
... Petitioner in all W.Ps.,

/vs./

The State Tax Officer,
Thanjavur II Assessment Circle,
Place: IInd Floor,
C.T.Buildings,
Sanchidananda Moopanar Road,
Thanjavur 613 001.
... Respondent in all W.Ps.,

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the impugned assessment orders on the file of respondent vide TIN. 33213825365/2011-12, 33213825365/2012-13, 33213825365/2013-14, 33213825365/2014-15 and 33213825365/2016-17 dated 11.12.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the years 2011-12, 2012-13, 2013-14, 2014-15 and 2016-17.

For Petitioner in all W.Ps., : Mr.Raja.Karthikeyan

For Respondent in all W.Ps., : Mr.J.K.Jeyaselan
Government Advocate

COMMON ORDER

Heard Mr.Raja.Karthikeyan, learned counsel for the petitioner and Mr.J.K.Jeyaselan, learned Government Advocate for the respondent.

2.This is the second round of litigation before this Court. Earlier, the petitioner had approached this Court in W.P.(MD) Nos.6811 to 6814 of 2018. In these writ petitions, the petitioner had challenged the assessment orders passed by the respondent for the assessment years from 2011-12 to 2016-17. The said writ petitions were disposed of with the following directions on 04.03.2021.

> *"4.The rate of tax cannot be determined with reference to the circulars issued by the administrative authorities. The petitioner's counsel draws my attention to the order dated 27.03.2014 in W.P.(MD)No.5866 of 2010(M/s.Veesons Energy Systems (P) Limited V. The Commissioner of Commercial Taxes, Chennai and another). In*

the said order, it was held as follows:-

> *"16. Therefore, from a conjoint reading of the above judgments and the provisions, it is clear that the first respondent had no powers to issue any circular or clarification. Further section 48 A was introduced with effect from 27.09.2011. Any order by the State Level Authority for Clarification and Advance Ruling under Section 48 A can only be made regarding any clarification on rate of tax on an application by a dealer. Even there, the first respondent has no powers to individually or independently issue any clarification on rate of tax. It is also clear that the first respondent does not have any authority to issue circulars or clarifications on any other matters other than rate of tax. The first respondent cannot use the circulars or clarifications to overcome the provisions of the statute. Any interpretation which was not intended by the legislature also cannot be introduced by way of circulars or clarifications. Any change in the statute can be brought in only by way of amendment. The levy of tax must be within the four corners of law and must not be based on surmises and conjunctures. Any act contrary to the provisions of the taxing statute would be hit by Article 265 of the Constitution of India. Therefore, the impugned circular issued without authority is set aside. The petitioner is directed to submit their objections within four weeks from the date of receipt of a copy of this order and the second respondent shall consider the objections and pass orders independently sticking on to the provisions of the Act. In the result, the Writ Petition is allowed. No costs".*

5.Respectfully following the aforesaid ratio, the orders impugned in these writ petitions are quashed. The writ petitions are allowed.

6.Even before commencing his argument, the learned counsel appearing for the petitioner undertakes that the petitioner will pay a sum of Rs.2,00,000/- covering the demand set out in the writ petitions within a period of two weeks from the date of receipt of a copy of this order. However, the payment of this amount will be without prejudice to the petitioner's contentions and they would abide by the final orders to be passed by the respondent.

7.I make it clear that in respect of the defects set out in the impugned orders, the respondent will have to pass orders afresh in accordance with law. The respondent will have to issue fresh notice to the petitioner herein and the petitioner is at liberty to file their objections. If the respondent is not satisfied with the explanation of the petitioner, after affording an opportunity of personal hearing, orders afresh will be passed in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed."

3.It is the case of the petitioner that during the pendency of the writ petitions, the petitioner had shifted the address from Thanjavur to Tirupathur and therefore, notices that preceded pursuant to the order passed by this Court on 04.03.2021 went unnoticed and therefore, the petitioner has once again suffered an adverse order.

4.It is the case of the petitioner that the petitioner had intimated the respondent that the petitioner had shifted the address from Tanjavur to Tirupathur

Taluk, in Sivagangai District. It is submitted that the petitioner tenders unconditional apology for not participating in the proceeding, as the petitioner was unaware of the notices that preceded pursuant to the impugned order. It is further submitted that after the impugned order was passed, the respondent has recovered total amount of Rs.7,02,457/- from the petitioner.

5.The learned Government Advocate for the respondent on the other hand would submit that these writ petitions are devoid of merits and are liable to be dismissed, as the petitioner has abused the Court proceeding by filing writ petitions earlier and after securing an order from this Court has failed to cooperate with the respondent and therefore, the respondent was constrained to pass the impugned order.

6.It is submitted that even the petitioner had shifted his place, the petitioner has not altered the e-mail ID and that notices were sent to the petitioner in the e-mail ID as well in the GST portal and thus, there is no merit in these writ petitions.

7.Having considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate for the respondent, I am inclined to give one last opportunity to the petitioner to explain the case subject to the petitioner depositing another 25% of the disputed tax over and above the amount that has been recovered from the petitioner already in cash within a period of 30 days from the date of receipt of a copy of this order. The petitioner shall also file a reply within the aforesaid period.

8.Subject to the petitioner's compliance with the above requirement, the respondent shall take up the case afresh and pass final orders on merits within a period of 3 months thereafter. It is made clear that the earlier order, which stood quashed, vide order dated 04.03.2021 and the impugned orders, which stand quashed today by this order, shall be treated as addendum to the notices that were issued to the petitioner both before and after 04.03.2021.

9.In case, the petitioner fails either to pay the amount as has been ordered by this Court today or fails to file reply, the order passed by this Court today shall stand automatically revoked *sine die*, in which case the respondent is at liberty to proceed against the petitioner in the manner known to law. Subject to the petitioner pre-depositing the amount, the Bank account of the petitioner shall be de-freezed.

10.These Writ Petitions stand allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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12.07.2024

To

The State Tax Officer,
Thanjavur II Assessment Circle,
Place: IInd Floor,
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Sanchidananda Moopanar Road,
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<u>C.SARAVANAN, J.</u>

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