BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).No.17458 of 2024
and
W.M.P(MD)No.14994 of 2024

Tvl.Ricky Enterprises,
Represented by its Proprietor
J.Jeyaprakash. ... Petitioner

Vs.

1.The Commissioner of Commerical Taxes,
O/o the Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The State Tax Officer,
Thirupparankundram Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for records pertaining to the impugned proceedings of the 2nd respondent in TIN No. 33146232022/2014-15, dated 14.05.2024 and quash the same.

For Petitioner : Mr.B.Rooban

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

ORDER

In this writ petition, the petitioner has challenged the order, dated 14.05.2024 for the assessment year 2014-15.

2. This is a second round of litigation before this Court. Earlier this petitioner had suffered an order, dated 20.08.2019 which was impugned before this Court in W.P(MD)No.29434 of 2023. By an order, dated 13.12.2023, the order, dated 20.08.2019 for the assessment year 2014-15 was quashed. The aforesaid order, dated 20.08.2019 preceded the following notices:

S.No.	Dated
1.	13.12.2018
2.	13.12.2018
3.	06.03.2019
4.	18.07.2019

3. In the earlier round, the case of the petitioner before this Court was that the notices were sent to the petitioner's old address, despite knowledge on the part of the respondent that the petitioner had shifted to the present address at Avaniapuram Bye-Pass Road, Madurai-625 012. It is submitted that the aforesaid order, dated 20.08.2019 was set aside by this Court by its final order,

dated 13.12.2023 in W.P(MD)No.29434 of 2023. The petitioner has given two replies which has been incorporated in the impugned order, dated 14.05.2024. However, no details of the alleged sale to third parties have been furnished to the petitioner. It is submitted that for the first time, a references made to the alleged sales made by the petitioner to various persons during the previous assessment years and that the impugned order is purely based on audit points raised by the Accountant General, Chennai.

4. The learned counsel for the petitioner would submit that the petitioner has given a complaint to the authorities to take action against those who have misused the petitioner's TIN number and department is reportedly prosecuting those who have misused the petitioner's TIN to facilitate wrongful availing of input tax credit. The reference is made to an earlier order passed by this Court for the assessment years 2011-12, 2012-13 and 2013-14 vide order, dated 22.12.2015 in W.P(MD)Nos.23218 to 23220 of 2015.

5. On the other hand, the impugned order is defended by the learned Additional Government Pleader for the respondents stating that the impugnd order is well reasoned and does not warrant any interference under Article 226

of the Constitution of India. It is submitted that the petitioner has an alternate remedy and the present writ petition is nothing but an abuse of Court proceedings. It is submitted that the petitioner is a known devider of tax who has facilitated availing of ineligible credit by either effecting sale without proper invoice / invoice without actual sale who facilitate wrongful availment of input tax credit by the purchasing dealers.

6. I have considered the arguments advanced by the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

7. Although the impugned order is a detailed order, it is noticed that the impugned order merely sets out the order passed by this Court on 13.12.2023, reply of the petitioner and has thereafter referred to transactions for the previous assessment years, namely 2011-12, 2012-13 and has referred to few dealers, who have allegedly availed input tax credit on the strength of the invoices generated from the petitioner's TIN number. As far as the subject assessment year 2014-15 is concerned, the details have not been furnished, although the impugned order states that the petitioner has not produced any

documentary evidence for the orders already passed for assessment year 2014-15 with respect to the audit points. Hence, the order, dated 20.08.2019 which stood quashed by order in W.P(MD)No.29434 of 2023, dated 13.12.2023 was correct and in accordance with law. The operative portion of the impugned order reads as under:

> "*The dealers at this end have not produced the relevant documentary evidences for the orders already passed for 2014-15 with respect to audit points raised by the Accountant General, Chennai. Hence the order already passed by the Assessing officer is finaly correct and is accordance with law.*
>
> *Verification of this office records also revealed that the dealers at this end are dragging the matter by endless and the main reasons to delay the recovery action under statute. The prima-facie for revision of assessment was based on the report received from the Accountant General, Chennai and show cause notice issued accordingly. The burden of proof is lying on the dealer itself under section 17 of the TNVAT Act-2006. The dealer at this end has to prove that there is no issue relating to the show cause notice. The dealer at this end has to satisfy the Assessing officer that there is no evasion on the part of the dealers. Even to the notice issued, the dealers at this end have not filed any objections till the date of passing of orders. Hence the notice issued and orders passed are according to Act and Rules and are in accordance in this law.*
>
> *The Assessing officer has strictly followed the directions/*

instructions of the Hon'ble High Court. But the dealers at this end have not co-operated with the Assessing officer in concluding the proceedings as expeditiously as possible. As such there is no connection with the criminal case pending with CBCID, Chennai as reported by Joint Commissioner (ST) Enforcement-1, Chennai and Audit points raised by the Accountant General Chennai. (Sales omission).

In the absence of non-production of valid documentary evidences before the Assessing Officer for verification, there is no other way except to confirm the orders already passed and to pass revision orders based on the order of Hon'ble High Court for the year 2014-15 as below: -

Taxable Turnover redetermined

Sales made to Tvl.Malarvizhi Constructions

(TIN 33791703171-Ponneri Circle, Chennai) : Rs.21,65,87,106 @ 5%

Tax Due	*: Rs. 1,08,29,355-*
Tax Paid	*: -- Nil --*

Balance	*: Rs. 1,08,29,355-*

A notice in Form 'O' is issued.

Interest:

It is also leviable interest at 2% for the payment of Tax due of Rs. 1,08,29,355- under Section 42(3) of the TNVAT Act-2006."

8. A reading of the above passages indicates that for the first time a reference is made to the sale made by the petitioner to one Tv.Malarvizhi Constructions. This ought to have been informed to the petitioner before confirming the demand vide impugned order, dated 14.05.2024. Thus, there is a violation of principles of natural justice. Hence, the impugned order, dated 14.05.2024 is quashed and the case is remitted back to the respondents to pass a fresh order on merits and in accordance with law. The impugned order which stands quashed shall be treated as addendum to the show cause notices that preceded the impugned order. The petitioner shall file a consolidated reply within a period of three (3) months from the date of receipt of copy of this order. During the interregnum period, the respondents are directed to furnish the details of the sale invoice which has facilitated the said dealer to avail input tax credit. The petitioner shall be heard before the final order is passed.

9. In view of the above, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

29.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

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2.The State Tax Officer,
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C.SARAVANAN, J.

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