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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.08.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.23396 of 2023
and
W.M.P(MD).Nos.19599 & 19600 of 2023

A.Sirajudeen ... Petitioner

Vs.

1.The Deputy Commissioner (ST),
Pudukottai Commercial Tax Office,
Pudukottai.

2.The State Tax Officer,
Thriuvarur Assessment Circle,
Thiruvarur.

3.The State Tax Officer,
Aranthangi Assessment Circle,
Aranthangi,
Pudukottai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned proceedings issued by the first respondent in Na.Ka.No.1509/2023/A4 dated 08.06.2023 and consequently, impugned proceedings issued by the 2nd respondent in Na.Ka.No.963/2017/A3 dated 19.09.2022 and quash the same as it is unlawful

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and unjustified.

For petitioner : Mr.A.Satheesh Murugan

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

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ORDER

Heard learned counsel for the petitioner and learned Additional Government Pleader for the respondents.

2. The petitioner seems to have resigned from the partnership firm namely M/s.Trichy Steel Company on 20.06.2010 and therefore, the re-constitution deed of partnership was executed.

3. It is the specific case of the petitioner that after the petitioner exited from the aforesaid partnership business, the petitioner has informed the Commercial Tax Department about the same on 22.06.2010 and has also filed a copy of the Form-C as is required under the Rule 4(10)(b) of the TNVAT Act, 2007 as it stood then.

4. It is, therefore, submitted that the demand confirmed in respect to the

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business carried on by the partnership firm during the assessment year 2010-11 to 2015-16 cannot be mulcted on the petitioner.

5. On the other hand, the learned Additional Government Pleader for the respondents submits that the so called delivery note does not bear any seal and therefore, it cannot be construed that the petitioner had given intimation. Further, the learned counsel for the petitioner is unable to confirm as to whether the partnership firm was registered or not. The aforesaid re-constitution deed of partnership indicates that the original deed of partnership was executed on 06.06.2002 and the petitioner was a partner in the said business since then.

6. It is further submitted that there is no acknowledgment obtained by the petitioner to the so called Form-C filed by the petitioner filed under Rule 4(10)(b) of Tamil Nadu VAT Act, 2006.

7. It is submitted that the petitioner cannot be absolved by the tax liability of the partnership firm, of which, the petitioner was a partner.

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8. It is submitted that Section 32(3) of the Indian Partnership Act, 1932 also makes clear that notwithstanding the retirement of a partner from a firm, the retiring partner and the other partners would continue to be liable as partner to third parties for any Act done by of them which would have been an act of the firm, if done by the retirement, until public notice is given of the retirement.

9. It is submitted that in this case, there is also been no public prior notice regarding retirement of the petitioner from the partnership firm and therefore, the petitioner cannot be absolved all the tax liability of the partnership firm for the assessment years 2010-11 to 2015-16.

10. The arguments of the petitioner as also the arguments advanced by the learned Additional Government Pleader for the respondents deserve consideration. The Court can take judicial notice the fact that both under the TNGST Act, 2017 and thereafter, TNVAT Act, 2006, the practice of maintaining of delivery notice was in vogue to record filing the documents at the Tapal Section. It was an accepted practice. The petitioner claims to have retired from the partnership firm with effect from 22.06.2010. The liability of the partnership for

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the assessment year 2010-11 is only Rs.98,684/-. Together with the penalty and surcharge, it comes to Rs.2,62,863/-.

11. The Department is not powerless to call for the records from the other partners to ascertain whether the petitioner continued to be a partner of the firm after 20.06.2010 and whether the petitioner was in receipt of any remuneration and was receiving any share in the profit of the business for the rest of the assessment years between 2011-12 and 2015-16.

12. Therefore, to balance the interest of the parties, this Writ Petition is disposed of by directing the respondents to ascertain from the records of the partnership firm by directing/ summoning the same from the partners as to whether the petitioner was in receipt of any income during the assessment years between 2011-12 and 2015-16.

13. As far as the assessment year 2010-2011 is concerned, the petitioner shall pay 1/5 of the amount out of Rs.2,62,863/-. In other words, the petitioner shall pay Rs.52,572/- to the credit of the respondents. This amount will be

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without prejudice to the rights of the petitioner for refund, in case the respondents are able to ascertain the records from the partnership firm that the petitioner has not received any profit after 20.06.2010 i.e. date of the petitioner's retirement from the partnership. In case no other records are made available by the other partners in this regard, it is for the respondents to recover the balance tax due.

This Writ Petitioner is disposed of with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No **02.08.2024**
Internet : Yes / No
apd

To
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Pudukottai.

2.The State Tax Officer,
Thriuvarur Assessment Circle,
Thiruvarur.

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C.SARAVANAN, J.

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