BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.(MD)No.3125 of 2025
and
W.M.P.(MD)No.2188 of 2025

P.Sinkaran ... Petitioner

-vs-

1.The Principal Commissioner and
Commissioner of Commercial Taxes,,
Ezhilagam, Chepauk, Chennai- 600 005.

2.The Assistant Commissioner (ST),
Kuzhithurai, Kanyakumari District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the second respondent pertaining to its proceeding TIN : 33366181655/2015-16, dated 27.08.2024 and to quash the same as illegal.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.R.Sureshkumar
Additional Government Pleader

ORDER

This Writ Petition has been filed seeking to quash the impugned order of the second respondent in TIN : 33366181655/2015-16, dated 27.08.2024

2. Heard both sides. With the consent of both sides, this Writ Petition is disposed at the admission stage itself.

3. According to the petitioner, he was upgraded to a Class-I contractor in 2011. The second respondent, by the order dated 25.04.2022, levied a tax of Rs.3,11,212/- for the assessment year 2015-2016, and by another order dated 26.10.2022, imposed a penalty of Rs.1,66,606/-. The petitioner submits that the perusal of the order dated 25.04.2022 shows that a notice, allegedly sent to him on 03.09.2018, was followed by a reply from the petitioner dated 08.10.2019. However, the petitioner contends that he neither received any such notice nor sent any reply as claimed by the second respondent.

4. Further, according to the petitioner, the order dated 25.04.2022 was sent by the second respondent only on 03.12.2022. The proceedings dated 26.10.2022 indicate that a penalty was levied under Section 42(1) / Section 63-A(2) of the

Tamil Nadu Value Added Tax Act [hereinafter referred to as "the TNVAT Act"']. On coming to know about the same, the petitioner approached the respondents to take appropriate action. The petitioner requested the second respondent to provide copies of the documents such as, the notice dated 03.09.2018, the particulars of the person on whom the notice was served, the date and mode of service, the acknowledgment receipt, the reply dated 08.10.2018 allegedly sent by him, and the notice dated 26.10.2022 imposing the penalty, along with the details of the persons on whom the notice was served and the mode of service. However, no information was provided to him.

5. According to the petitioner, after much delay, he received a notice dated 03.09.2018 by communication dated 17.05.2023. The acknowledgment enclosed with the notice does not bear any signature. He also received a copy of the reply, which is alleged to have been sent by him, but, on perusal of the same, it is evident that his signature is not present on the communication. The petitioner contends that, without providing him an opportunity or following the principles of natural justice, a substantial amount is being sought to be recovered, i.e., Rs.3,11,212/- towards tax and Rs.1,66,606/- towards penalty, totaling Rs.4,77,818/-.

6. Aggrieved by the same, the petitioner filed a writ petition in W.P.(MD) No.25206 of 2023. By order dated 12.06.2024, this Court remitted the matter to the second respondent for passing a fresh order. Pursuant to the order of this Court, the second respondent issued a notice to the petitioner. However, due to the petitioner's medical treatment, he could not appear before the second respondent and requested an extension of time. Despite the same, the impugned order was passed. Hence, this writ petition.

7. The learned Additional Government Pleader appearing for the respondents submits that, against the order passed by the second respondent, the petitioner has an appellate remedy under Section 51 of the TNVAT Act.

8. In view of the above submission, this Court directs the petitioner to approach the competent authority and to file an appeal under Section 51 of the TNVAT Act within one month from today. The appellate authority is directed to adjudicate the case and pass appropriate orders on merits and in accordance with the law, within three months thereafter.

9. With the above directions, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No **04.02.2025**
Index : Yes / No
smn2

To:-

1.The Principal Commissioner and
Commissioner of Commercial Taxes,,
Ezhilagam, Chepauk, Chennai- 600 005.

2.The Assistant Commissioner (ST),
Kuzhithurai, Kanyakumari District.

VIVEK KUMAR SINGH, J.

smn2

W.P.(MD)No.3125 of 2025

04.02.2025