

W.P.(MD) Nos.4359 & 4365 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	10.04.2024
Delivered on	30.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.4359 & 4365 of 2022

and

W.M.P.(MD) Nos.3685 & 3689 of 2022

M/s.V.R.Muthu & Bros.,
Rep. by its Partner,
443, Bazaar,
Virudhunagar.

... Petitioner in
W.P.(MD) No.4359/2022

M/s.V.V.V. and Sons Edible
Oils Limited,
Rep. by its Director,
443, Bazaar,
Virudhunagar.

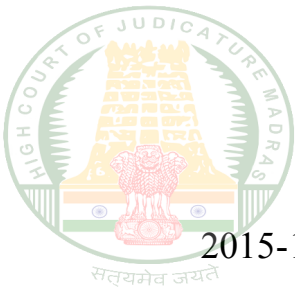
... Petitioner in
W.P.(MD) No.4365/2022

Vs.

The State Tax Officer – 1,
Virudhunagar.

... Respondent in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN 33175721640/Assessment Year



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2015-16 and quashing the Form PP Summon dated 06.01.2022 issued therein.

For Petitioner
in both W.Ps. : Mr.R.L.Ramani, Senior Counsel
for Mr.S.Raja Jeyachandra Paul

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

COMMON ORDER

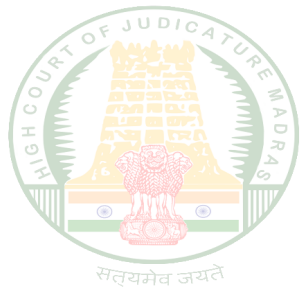
By this common order, both these Writ Petitions are being disposed of.

2. In these present Writ Petitions, the petitioners have challenged the impugned summon issued in Form PP calling upon the respective petitioners to furnish the following documents:-

“1.Trading account, profit and loss account and balance sheet with schedules, Income Tax returns and audited statement in form 3CD of the Income Tax Act 1961.

2.Cash Book, Day book, Petty Cash Book, Bank Book,

3.Purchase account, Sales account, Consignment account, stock transfer account, Productions-cum-stock register/manufacturing account,



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4.Input Tax Adjustment account, Input Tax on Capital Goods adjustment account, Purchase register, purchase return register, debit notes,

5.Sales register, sales return register, credit notes, stock book register, delivery notes register, transit pass account register, Ledgers,

6.Purchase invoices, Sales Invoices

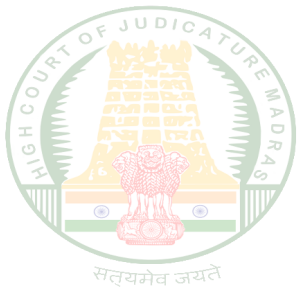
7.Copy of Delivery challan in form JJ along with register

8.Registers maintained under CST Act viz Form No. 8, Form No. 8-A, Form No. 10, Form No. 12 and form No. 13 with respect of utilization of declaration forms received from the assessing authorities / issued through electronic declaration forms.

9.Export Documents, declaration forms etc for proof of exemptions claimed, if any

10.Transport records and connected Proof for claim of E1 Sales / Form F exemption.”

3. The impugned summon has been issued to the respective petitioners under Rule 16(1) of the Tamil Nadu Value Added Tax Rules, 2007. Rule 16(1) is intended for implementing Section 81 of the TNVAT Act, 2006.

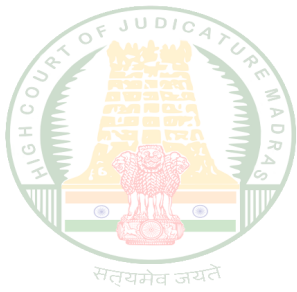


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WEB COPY 4. The specific case of the petitioner is that summon in Form PP under Rule 16(1) of the TNVAT Rules, 2007 applies only to a third party and not to an assessee. That apart, it is submitted that the petitioner had filed returns under Section 21 of TNVAT Act, 2006 and therefore, the assessment was deemed to have been completed on 31.10.2016 for the Assessment Year 2015-2016 in terms of Section 22(2) of the TNVAT Act, 2006.

5. The learned Senior counsel for the petitioners would therefore submit that the power to summon documents or information from an assessee, who has filed regular returns could be only in accordance with Section 22(3) of the TNVAT Act, 2006.

6. Hence, it is submitted that the impugned summon is liable to be quashed. A specific reference was made to a decision of this Court rendered on 19.05.2021 in the petitioner's own case in W.P.(MD) Nos. 11328 to 11335 of 2017, wherein, it was observed as under:-



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“3. His core contention is that it is only the Commissioner of Commercial Tax who could have called upon the petitioner to produce the documents in question for detailed scrutiny and that the respondent herein is not possessed of the jurisdiction to do so. There can be no exception to his contention. In fact, the same is virtually conceded by the respondent. But then, the respondent would state that it was the Commissioner of Commercial Tax who had chosen the petitioner's assessment for random scrutiny and that pursuant to his proceedings dated 21.04.2017, the impugned summons came to be issued. However, in the impugned summons, there is no reference to the Commissioner's proceedings.

4. In any event, in view of the interim stay granted by this court, the summons have become virtually infructuous. Therefore, these Writ Petitions are disposed of by directing the respondent to issue a fresh summon in this regard. When the respondent issues summons, the respondent will take care to make a clear reference to the proceedings of the Commissioner of Commercial Tax referred to in the counter. No costs. Consequently, connected miscellaneous petitions are closed.”

7. The learned Government Advocate for the respondent Commercial Tax Department would submit that the impugned summon has been issued in consonance of Rule 10(11) of the Tamil Nadu Value Added Tax Rules, 2007. Specifically, the learned Government Advocate



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for the respondent would draw attention to paragraphs 9, 13 and 14 of the counter affidavit, wherein, it is stated as under:

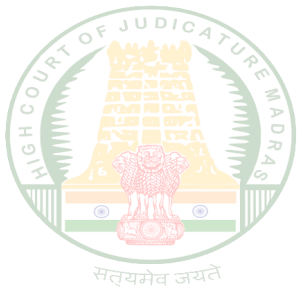
*“9. In respect of averments contained in Para 5 and 6, I submit that the Commissioner of Commercial Taxes has issued instructions relating to finalization of accounts relating to dealers who have been selected for detailed scrutiny u/s.22(3) of the TNVAT Act 2006 vide **Commissioner of Commercial Taxes letter in No.R5/4593/2017 dated 08.01.2021**. In the Para 13.1.B of the letter the Commissioner of Commercial Taxes has given the following instructions-*

"Where Pre-Assessment notice or Best Judgment notices already initiated consequent to field audit or surprise inspection proposals received from Enforcement Wing, to the selected tax payers, no summons or notice need to be issued to the tax payers requiring them to produce books of accounts for detailed check under section 22(3), if the related assessment years are already covered as it is presumed that detailed verification already been carried out during such inspection or audit of the premises of the tax payers".

10.

...

13. I further submit that knowing the fact that the assessment for the year 2015-16 have already been selected for detailed scrutiny u/s. 22(3) of TNVAT Act 2006 by the Commissioner of



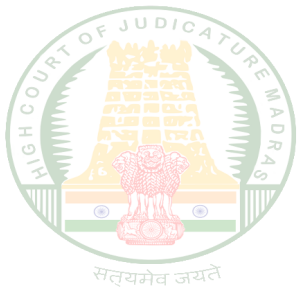
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Commercial Taxes and that the Form-PP summon has been issued only in accordance with the rule 10(11) of TNVAT Rules 2007, the petitioner has filed this writ petition only in order to prolong or to dilute the proceedings, the petitioner has unwantedly filed this writ petition and thereby dragging on this issue. It is also evident from the conduct of the petitioner that they are not willing to produce the accounts to the department.

14. I further submit that the department's initiation of issuing summon in Form-PP for production of accounts based on the two grounds namely shop inspection coupled with selection of random scrutiny by the Commissioner of Commercial Taxes. The issuance of Form-PP by the department is well within the jurisdiction of the assessing officer along with complying the statutory provisions. The petitioner's contention of issuance of Form-PP is not in accordance with the law either by invoking section 81 or failure to invoke section 65(4) is not at all sustainable. Being an assessing officer the respondent/assessing officer is having powers to verify the accounts of the dealer and to conduct any enquiry if required. The act of the respondent is only to discharge the official duty and well within the provisions of the statutory obligation.

8. Hence, it is submitted that the decision of this Court rendered on 19.03.2021 in W.P.(MD) Nos.11328 to 11335 of 2017 is not relevant and therefore, these Writ Petitions are liable to be dismissed.



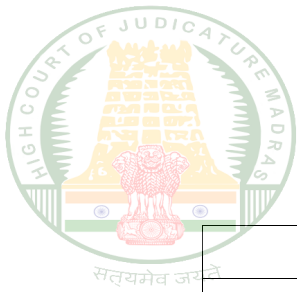
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9. By way of rejoinder, the learned Senior Counsel for the petitioners reiterated that an identical issue was disposed of by this Court for the previous assessment year in W.P.(MD) Nos.11328 to 11335 of 2017 and therefore, the same order has to be followed.

10. That apart, the summons in Form PP under Rule 16(1) of the TNVAT Rules, 2007 can only apply to the proceedings under Section 81 of the TNVAT Act, 2006 and therefore, the machinery prescribed under Section 81 of the TNVAT Act, 2006 read with Rule 16(1) of the TNVAT Rules, 2007 read with Form PP prescribed will apply to a third party and not to an assessee like the petitioner whose assessment is deemed to be completed under Section 22(2) of the TNVAT Act, 2006. Hence, he prays for quashing the impugned summons issued by the respondent.

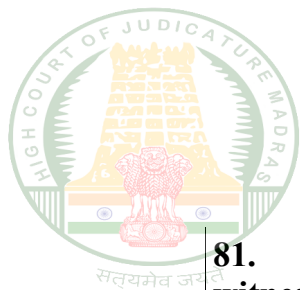
11. I have considered the arguments advanced by the learned Senior Counsel for the petitioners and the learned Government Advocate for the respondent.

12. For the purpose of proper and detailed discussion, the relevant provisions are extracted hereunder:-



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<i>ACTS</i>	<i>RULES</i>
22.Deemed Assessment and procedure to be followed by the assessing authority.- (1) (2) (3) Notwithstanding anything contained in sub-section (2), not exceeding twenty per cent of the total number of such assessments shall be selected by the Commissioner in such manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer and in such cases, revision of assessment shall be made, wherever necessary.	10.Input Tax Credit (1) (2) (11) The method of selection by the Commissioner referred to in sub-section (3) of section 22 shall be based on suitable stratified random sampling method and such selection shall not exceed twenty per cent of the cases assessed under sub-section (2) of section 22 and intimate the details of such selection to the assessing authority for detailed scrutiny of accounts. Such list shall be exhibited on the Notice Board of the assessment circles and also in the website of the department. The assessing authority shall call for the accounts of those assesseees for detailed scrutiny and pass appropriate orders.



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81. Power to summon witnesses and production of documents.--

(1) An assessing authority, or an appellate or revising authority including the Appellate Tribunal or any officer of the Commercial Taxes Department, not below the rank of an Deputy Commercial Tax Officer shall, for the purposes of this Act, have all the powers conferred on a court by the Code of Civil Procedure, 1908 (Central Act V of 1908), for the purpose of -

(a) summoning and enforcing the attendance of any person and examining him on oath or affirmation; and

(b) compelling the production of any document.

(2) Without prejudice to the provisions of any other law for the time being in force, where a person to whom a summon is issued either to attend to give evidence, or produce accounts, registers, records or other documents at a certain place and time intentionally omits or fails to attend or produce accounts, registers, records or other documents at such place or time, the authority or officer mentioned in sub-section (1) may, after giving the person concerned a reasonable opportunity of being heard, impose upon him by way of penalty a sum not exceeding

16.Miscellaneous:-

(1) The summons under Section 81 for the production of a document or for the appearance of any person shall be in Form PP.

2) Where a person to whom a notice under section 45 is served objects to it by a statement under subsection (5) of section 45, such statement shall be in Form QQ.

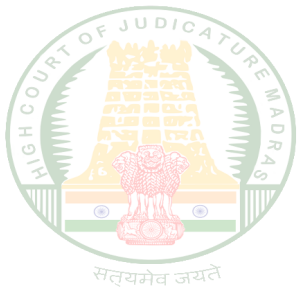
(3) A person other than the assessee or his agent or representative who appears pursuant to a summon under section 81 to give oral or documentary evidence shall be paid traveling allowance and bata at such rates as may be fixed by the State Government from time to time.

(4) The Government may, in the public interest or to mitigate hardship to the trade remit the whole or any part of the tax or penalty or fee payable in respect of any period by any dealer under section 31 subject to the condition that in respect of remission of tax the dealer had not collected tax on the turnover in respect of that period for which remission is sought to be granted.

(5) The notice for levy of penalty or interest will be issued in Form RR.

(6) In the case of any guardian, trustee, or agent of any minor carrying on a business on behalf of and for the benefit of such minor, the tax shall be levied and collected from such guardian, trustee or agent, as if the minor was conducting the business and all the provisions of the Act and Rules made under shall apply accordingly.

(7) In the case of business owned by a



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WEB COPY 13. The object of Section 22(3) of the TNVAT Act, 2006 is implemented by Rule 10 of the TNVAT Rules, 2007. As per Section 22(3) of the Act, not exceeding 20% of the total number of such assessments shall be selected by the Commissioner in such manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer and in such cases, revision of assessment shall be made, wherever necessary.

14. As per Rule 10(11) of the TNVAT Rules, 2007, the method of selection by the Commissioner referred to in sub-section (3) of section 22 shall be based on suitable stratified random sampling method and such selection shall not exceed twenty per cent of the cases assessed under Section 22(2) of the TNVAT Act, 2006.

15. Wherever there is stratified random sampling method of selection, an assessee is required to be intimated the the details of such selection to the assessing authority for detailed scrutiny of accounts. Such list is to be exhibited on the Notice Board of the assessment circles and also in the website of the department. The assessing authority can call for

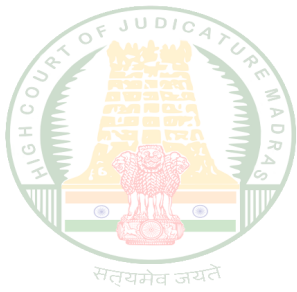


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the accounts of those assesseees for detailed scrutiny and pass appropriate orders.

16. Section 81 of the TNVAT Act, 2006 is a generic provision. It is not confined merely to a third party. The power to issue summon to a witness and production of documents is very wide and would include a dealer. Under Section 81 of the Act, an Assessing Authority, or an Appellate Authority or a Revising Authority including the Appellate Tribunal or any Officer of the Commercial Taxes Department, not below the rank of an Deputy Commercial Tax Officer shall, for the purposes of the Act, have all the powers conferred on a Court by the Code of Civil Procedure, 1908, for the purpose of (a) summoning and enforcing the attendance of any person and examining him on oath or affirmation; and (b) compelling the production of any document.

17. As per Sub-Section 2 to Section 81 of TNVAT Act, 2006, the Authority or Officer mentioned in Sub-Section 1 to Section 81 of the Act can impose penalty of a sum not exceeding Rs.500/- on a person who intentionally omits or fails to attend or produce accounts, registers, records or other documents at such place or time.

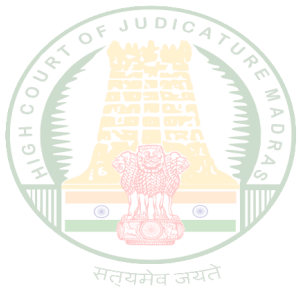


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WEB COPY 18. As per Sub-Section 3 to Section 81 of TNVAT Act, 2006, any officer of the Commercial Taxes Department, not below the rank of an Deputy Commercial Tax Officer shall have powers to call for such information, particulars or records as he may require from any person for the purpose of assessment, levy and collection of tax under this Act.

19. Thus, the power under Section 81 of the TNVAT Act, 2006 is wide and is not eclipsed by the power vested under Section 22(3) of the TNVAT Act, 2006 read with Rule 10(11) of the TNVAT Rules, 2007.

20. The purpose of Section 22(3) of the TNVAT Act, 2006 read with Rule 10(11) of the TNVAT Rules, 2007 is to ensure that atleast 20% of the total number of such assessments are selected by the Commissioner in a manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer. Wherever there is a stratified random sampling method of selection by the Commissioner, revision of assessment can be made, wherever necessary. This is in addition to the power to be exercised independently by an Assessing Officer under Section 81 of the TNVAT Act, 2006.

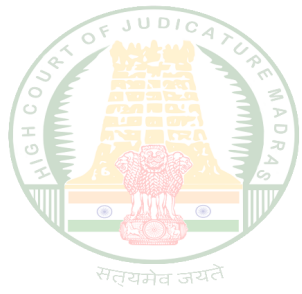


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WEB COPY 21. Merely because assessment is deemed to be completed under Section 22 of TNVAT Act, 2006, *ipso facto* will not mean that an Assessing Officer cannot call for information from a dealer whose name features in the list under Section 22(3) of the Act.

22. To refuse to give particulars called for is to impede an assessment by an Assessing Officer. It is not contemplated. Section 22(3) of the TNVAT Act, 2006 is intended to ensure that even if the Assessing Officer does not intend to assess the return, by random stratified sampling, the Assessing Officer can be forced to look into the returns of those assesses whose returns would have otherwise escaped scrutiny.

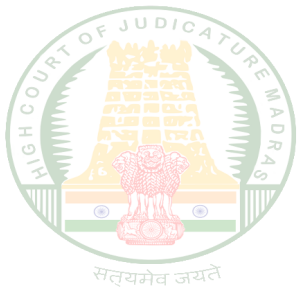
23. In this case, it has been informed by the respondent Commercial Tax Department that the Commissioner of Commercial Taxes *vide* Letter dated 08.01.2021 bearing reference No.R5/4593/2017 has issued instructions relating to finalization of accounts relating to dealers who have been selected for detailed scrutiny under Section 22(3) of the TNVAT Act, 2006.



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WEB COPY 24. The paragraph 13.1.B of the letter of the Commissioner of Commercial Taxes has been extracted in paragraph 9 of the counter affidavit, wherein, it has been stated that *"Where Pre-Assessment notice or Best Judgment notices already initiated consequent to field audit or surprise inspection proposals received from Enforcement Wing, to the selected tax payers, no summons or notice need to be issued to the tax payers requiring them to produce books of accounts for detailed check under section 22(3), if the related assessment years are already covered as it is presumed that detailed verification already been carried out during such inspection or audit of the premises of the tax payers"*.

25. Thus, I see no embargo on the respondent Commercial Tax Department from summoning the respective petitioners to furnish the records. In fact, the assessment will be deemed to have been completed only if the petitioners had complied with all the requirements of Section 22(2) of the TNVAT Act, 2006. The return that was to be filed under Rule 7 of the TNVAT Rules, 2007 should be in the prescribed form and should accompany prescribed documents and proof of payment of tax.



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26. Merely because the assessment is deemed to have been completed on 31st October, 2016 in both cases would not mean that the officers are precluded from exercising the power under Section 27 of the TNVAT Act, 2006 or under Section 25 of the Act.

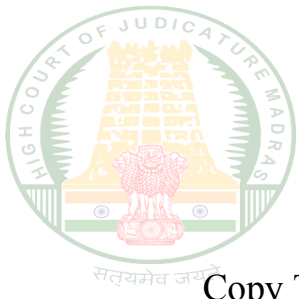
27. Issuance of summons is for ascertaining to produce information. Whether the petitioners have complied with all the requirements of Section 22(2) of the Act and whether the declarations in the returns filed by the petitioners are correct or not can be ascertained only if records are summoned. Therefore, there are no merits in the present Writ Petitions and these Writ Petitions are liable to be dismissed.

28. Accordingly, these Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

30.04.2024

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

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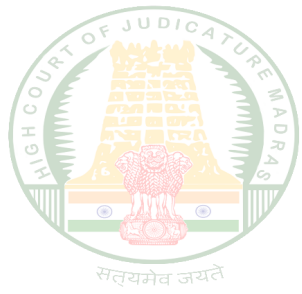


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The State Tax Officer – 1,
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C.SARAVANAN, J.

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Pre-Delivery common order made in

W.P.(MD) Nos.4359 & 4365 of 2022
and

W.M.P.(MD) Nos.3685 & 3689 of 2022

30.04.2024