

HIGH COURT OF MADRAS**Bench: Justice C. Saravanan****Date of Decision: 02.11.2023**

W.P.No.26493 of 2022 and W.M.P.Nos.25555 & 25556 of 2022

M/s.Shewil Trading Company, Represented by its Proprietor, M.V.Lawrence
.....Petitioner

Versus

- 1.The Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai – 600 005.
- 2.The Assistant Commissioner (CT), 48/39, Rajaji Salai, Evening Bazaar Assessment Circle, Chennai.
- 3.The State Tax Officer (FAC), Park Town Assessment Circle, Chennai – 600 003.
- 4.The Inspector of Police, Cyber Crime Cell, Central Crime Branch, ..
Vepery, Chennai – 600 007. .. Respondents

Legislation:

Article 226 of the Constitution of India

TNGST Act, 1959

TNVAT Act, 2006

TNVAT Rules, 2007

GST Act

Subject: Writ Petition challenging a recovery notice for tax assessment years 2014-2015 and 2015-2016. Allegations of unauthorized use of the petitioner's login credentials for electronic tax filing, leading to fraudulent transactions.**Headnotes:**

Commercial Taxes – Recovery Notice Challenged: Petitioner challenges recovery notice seeking Rs.11,63,24,233/- for AY 2014-15 and 2015-16, alleging non-receipt of assessment order and issues with electronic filing. [Paras 2-5]

Cyber Crime Allegation and FIR - Allegations of unauthorized use of the petitioner's login ID, resulting in fraudulent transactions. Complaint registered with the Cyber Crime Cell, leading to an FIR. [Paras 6, 14]

Respondents' Position: Justification for non-interference with recovery notice. Petitioner's non-participation in assessment proceedings noted, along with continuation of business under new ID post-GST, and eventual cessation in 2018. [Paras 7-9]

Judicial Analysis and Precedent Reference: Reference to a similar case involving misuse of login ID (W.P.Nos.37044 & 37045 of 2016, M/s.Hansa Enterprises). Direction for investigation by Commercial Tax Officer and Cyber Crime Wing. [Paras 12-13]

Interim Court Orders: Impleadment of Cyber Crime Cell Inspector for investigation. Suspension of revenue recovery pending investigation, with a deadline of 18 months. Asset attachment to continue. [Paras 15-17]

Decision: Writ petition disposed with specific directions for investigation and interim asset attachment. [Para 19]

Referred Cases: None.

Representing Advocates:

For Petitioner: Mr. Hari Radhakrishnan

For Respondents: Mrs. K. Vasanthamala, Government Advocate

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the following impugned notice dated 29.07.2022 issued in TIN No.33380340401/2014-15/A3 issued by the 3rd respondent and quash the same.

ORDER

The petitioner has challenged the impugned Notice dated 29.07.2022 issued in TIN No.33380340401/2014-15/A3 issued by the 3rd respondent.

2.The petitioner was issued by a impugned recovery notice dated 29.07.2022 seeking to recover a sum of Rs.11,63,24,233/- from the petitioner for the assessment year 2014-2015 and 2015 -2016.

3.The specific case of the petitioner is that the impugned notice has been issued seeking to recover the aforesaid amount of Rs.11,63,24,233/- without even serving a copy of the assessment order. It is submitted that the petitioner was a dealer engaged in the business of outward supply of Curtains, Form mattresses and Pillows and was carrying on the business for almost 28 years and filed manual returns under the provisions of erstwhile

TNGST Act, 1959 and electronically under the provisions of TNVAT Act, 2006 for the Assessment Year 2009-2010.

4.It is submitted that the petitioner was filing regular returns electronically till December 2013 in terms of the provisions of TNVAT Rules, 2007. It is further submitted that from January 2014, the petitioner experienced a problem. The petitioner was unable to login and file return in the portal as the petitioner's attempt to login was declined on the screen as 'invalid login account'. The petitioner has therefore filed returns manually and had escalated the issue with the 2nd respondent on 06.02.2014, 22.12.2014, 09.02.2015 and 02.07.2015.

5.It appears that the petitioner was also issued with a notice dated 22.12.2014. The petitioner replied on 06.02.2014. By a communication dated 24.07.2015, the 2nd respondent informed the petitioner regarding to change the password. It reads as follows:

*“For the Notice issued in the reference first cited, you, Tvl.Shewill Trading Company, doing business at No.59, New No.28, Evening Bazaar Assessment Circule, have replied in your letter second cited that you have not filed any transaction in your monthly returns in Form I, whereas you are filing monthly returns in Form K and have contended that you are not aware of the transactions showed in the return and some unauthorized persons have filed the returns by using their TIN Number and disclosing huge alleged purchases and sales turnover. As per your reply, the sales and purchases reported in your return in Form I cannot be genuine and bonafide. It must be a claim on fictitious transaction. **While necessary action is being taken at this end on this fabricated issue, you are requested to change your password immediately, in order to avoid using of your password by unauthorized persons and to arrest the leakage of Government revenue.***

You are requested to treat this as URGENT and send your action taken report, immediately to this office.”

6.The above notice was followed by few other notices. Meanwhile, the petitioner also approached the 2nd respondent by way of the complaint dated 18.09.2015 and thereafter filed a complaint before the Cyber Crime Cell, Central Crime Branch, Veppery on 31.08.2015, which has culminated in FIR dated 06.04.2017 in Crime No.100 of 2017. It has been reiterated by the petitioner regarding the alleged misuse of the petitioner's login ID and Password, as a result of which, huge transaction has been shown to be made by a person using the petitioner's TIN number.

7.The respondents submit that the impugned recover notice does not call for an interference. It is submitted that the petitioner has suffered an assessment order dated 09.11.2021 which preceded a notice prior to passing of the said order. However, the petitioner failed to participate in the assessment proceedings.

8.It is submitted that after the order was passed on 09.11.2021, several attempts were also made to serve a copy of the order on the petitioner. However, the assessment order dated 09.11.2021 was returned with an endorsement 'no such company in this address'.

9.It is further submitted that after the GST Act came into force, the petitioner, started carrying on business with a new ID and closed down the business in the year 2018. The registration was also cancelled on 05.03.2019 with retrospective effect from 31.12.2018.

10.By way of rejoinder, the learned counsel for the petitioner submitted that in case this Court was inclined to disallow the prayer of the petitioner, the

petitioner may be granted liberty to file statutory appeal under the provisions of TNVAT Act, in accordance with law.

11.I have considered the arguments advanced by the learned counsel for the petitioner and respondent.

12.Almost an identical issue came up before this Court in W.P.Nos.37044 & 37045 of 2016 in the case filed by M/s.Hansa Enterprises, Park Town Chennai, from a same location in Parrys Corner, in Chennai. There also, the petitioner therein had similarly alleged that the petitioner's login ID was misused by a third party, who filed returns and had passed on huge Input Tax credit to third party.

13.The Court after considering the submission of the petitioner therein and the learned Government counsel, directed the Commercial Tax Officer to pass a proper order after thorough investigation with the help of Economic Offence and Cyber Crime Wing of the State as to whether indeed there was a misuse of login ID or whether the petitioner therein was masquerading as an unknown person to make it seem as if the said login ID was misused by an unknown person facilitating availing of ineligible Input Tax credit and to evade tax.

14.In the present case, the petitioner has also filed a complaint before the Cyber Crime in FIR.No.100 dated 06.04.2017 for the alleged misuse of the login ID of the petitioner from 01.01.2014 to 31.08.2015. The status of the investigation pursuant to the above FIR registered based on the complaint of the petitioner is not known.

15.Considering the above fact and to balance the interest of the parties, Court is inclined to *suo motu* implead **The Inspector of Police**, Cyber Crime Cell, Central Crime Branch, Vepery, Chennai – 600 007 is impleaded as the

4th respondent in this Writ Petition to carryout thorough investigation on the complaint filed by the petitioner as to whether the complaint filed by the petitioner was genuine or not or whether the petitioner was facilitating a third party to use his login ID to evade tax and to pass an ineligible Input Tax credit to unknown persons or whether the petitioner was himself masquerading as an unknown person to evade tax.

16.The Commercial Tax Department shall co-ordinate with the rest of the respondents and the 4th respondent and investigate into the complaint of the petitioner. This exercise shall be completed within a period of eighteen (18) months from the date of receipt of a copy of this order. Till such investigation is completed, all revenue recovery proceedings against the petitioner shall be kept in abeyance. In case, the complaint of the petitioner turns out to be untrue or was intended to facilitate fraud being committed using the login ID of the petitioner, the assets of the petitioner shall be brought to sale.

17.Pending such exercise, the assets of the petitioner shall remain attached by the respondents 1 to 3 and suitable steps be taken by the respondents to that effect.

18.The respondents shall endeavor to bring a closure to the issue preferably within a period of eighteen (18) months from the date of receipt of a copy of this order.

19.The Writ Petition stands disposed of with the above observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

*Disclaimer: Always compare with the original copy of judgment from the official website.