IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17018 of 2018
and
W.M.P.Nos.20270 & 20271 of 2018

M/s.Sri Karpaga Vinayagar Textiles,
rep.by its Managing Partner A.Sathyakumar
4/38, Udumalpet Road,
Kollarpatti, Pollachi,
Coimbatore District. ..Petitioner

vs

The Assistant Commissioner(ST),
Pollachi East Assessment Circle,
Pollachi, Coimbatore District.
.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Respondent in his proceedings in TIN No.33242260690/2010-11 to 2015-16 dated 25.04.2018 and quash the same as illegal and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.S.Ramanathan
For Respondent : Mrs.G.Dhanamadhri
Government Advocate(Taxes)

O R D E R

The order passed by the respondent in proceedings dated 25.04.2018 in respect of the revision of assessment made under Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as “the TNVAT Act”) is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner made out two grounds to assail the order impugned in this writ petition. The learned counsel for the petitioner is of an opinion that for each assessment year, separate proceedings are to be issued by the competent authority, contrarily, a common order has been passed by the competent authority namely, the Assistant Commissioner(ST) in respect of six assessment years. The learned counsel for the petitioner further raised a point by stating that for each assessment year, a separate appeal is to be filed before the Appellate Authority and in such an event, it may not be possible for the writ petitioner to produce the original copy of the order in all the six appeals to be filed before the Appellate Authority. Thus, the authority competent is bound to pass orders separately in respect of each assessment year. Secondly, the learned counsel for the petitioner cited Section 22(4) of "the TNVAT Act", which reads as under:

> "If no return in submitted by the dealer for any period of the year or if the return filed is incomplete or incorrect, or if not accompanied with any of the documents prescribed or proof of payment of tax, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed, after the completion of that year:
>
> Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard."

3.The proviso clause in Sub-section(4) of Section (22) of "the TNVAT Act" enumerates that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

4.The learned counsel for the petitioner contended that the word "being heard" is to be interpreted, so as to provide an opportunity of personal hearing to the aggrieved person. Thus, a personal hearing is mandatory and contemplated under Section 22 (4) of "the TNVAT Act". However, such a personal hearing has not been provided to the writ petitioner before passing the impugned order under Section 22(4) of "the TNVAT Act". On these two grounds, the impugned order is liable to be scrapped.

5.The learned Government Advocate appearing on behalf of the respondent opposed the contention by stating that the first ground raised by the writ petitioner is untenable in view of the fact that passing a separate order will not serve any purpose and may not have any meaning. Each year has been separately mentioned in the impugned order and the details are given separately, therefore, passing a separate order is an empty formality and no useful purpose would be served.

6.The learned Government Advocate further contended that the breakup details in respect of each assessment year has been separately mentioned and therefore, it may not be an issue for the writ petitioner to defend his case on merits and in accordance with law.

7.In respect of the grounds raised that the personal hearing was not given, the learned counsel contended that the opportunity for submitting explanation/objections was already given to the writ petitioner and therefore, the conditions stipulated in Section 22(4) of "the TNVAT Act" has been complied with by the competent authorities. Providing a personal hearing is the discretion of the authorities and in the event of any further doubt, the authority may call for the writ petitioner for personal hearing. However, an opportunity to submit the explanation/objections was provided to the writ petitioner and the writ petitioner has to avail the same and submit his defence. Therefore, both the contentions raised on behalf of the writ petitioner are untenable and the writ petition is liable to be rejected.

8.Considering the arguments as advanced both by the learned counsel for the petitioner and the learned Government Advocate for the respondent, this Court is of an opinion that passing of separate orders in respect of each assessment year may be a mere technical objection. However, it may be convenient for the writ petitioner to prefer an appeal, if separate orders are passed. Therefore, it is preferable that the authorities competent shall pass separate orders in respect of each assessment year, so that the aggrieved person can prefer an appeal for each assessment year without any delay. One of the difficulties raised by the learned counsel is that in each appeal, the original assessment order is to be enclosed. Atleast, for that purpose, the competent authorities shall pass separate orders in respect of each assessment year. Secondly, a personal hearing as contemplated under Section 22(4) of "the TNVAT Act" is to be given in the present case. As far as the petitioner is concerned, the impugned order is for the six assessment years. Therefore, it is preferable to give not only a reasonable opportunity of submitting is explanations, but a personal hearing also. However, it is not made clear that, whether the writ petitioner had submitted any such application, seeking personal hearing.

9.This Court is of an opinion that the writ petitioner has to make such an application seeking personal hearing and in the event of submitting such an application, the authorities competent are bound to provide an opportunity of personal hearing for submitting the defence or otherwise. In view of these factors, this Court is of an opinion that it is a fit case for remittance.

10.Accordingly, the impugned order passed by the respondent in proceedings in TIN No.33242260690/2010-11 to 2015-16 dated 25.04.2018 is quashed. The writ petitioner is directed to submit an application for personal hearing along with the explanations and documents, if any, within a period of one week from the date of receipt of a copy of this order. On receipt of such explanation/documents, the respondents are directed to provide an opportunity of personal hearing to the writ petitioner within a period of one week thereafter. After concluding the proceedings in all respects, the respondents are directed to pass final orders on merits and in accordance with law within a period of two weeks thereafter.

11.Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner(ST),
Pollachi East Assessment Circle,
Pollachi, Coimbatore District.

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.44999

+1cc to the Spl Government Pleader, S.R.No.45393

W.P.No.17018 of 2018

VSNII(CO)
GSP(20/07/2018)