IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.26130 of 2018
and
W.M.P.Nos.30345 & 30346 of 2018

Tvl.G.T.India Pvt. Ltd.,
Rep. by its Director
No.22, Strotten Muthiah Mudali Street,
Chennai-600 079. ... Petitioner

Vs.

The State Tax Officer
Sowcarpet Assessment Circle
Wavoo Manson, Rajaji Salai,
Chennai-600 001. ... Respondent

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARIFIED MANDAMUS, to call for the records of the respondent in CST/98145/2016-2017 dated 29.08.2018 and consequential order dated 24.09.2018 and quash the same as illegal, arbitrary and contrary to law and principle of natural justice and further direct the respondent to consider the documents filed for export sales, sales return and the exempted sales by providing an opportunity of personal hearing and thereafter, pass the order in accordance with facts and circumstances of the law.

For Petitioner : Mrs.C.Rekha Kumari

For Respondent : Mrs.G.Dhana Madhri,
Government Advocate

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate takes notice for the respondent. By consent of the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 29.08.2018 passed in respect of the assessment year 2016-2017 and the consequential order dated 24.09.2018 in

disposing the petition filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 r/w Section 9(2) of the CST Act, 1956.

3. The petitioner is a registered dealer and an Assessee on the file of the respondent. In respect of the assessment year 2016-2017, an order of assessment dated 29.08.2018, impugned in this writ petition, was passed by determining the total and taxable turn over. The petitioner filed a petition under Section 84 of the TNVAT Act, 2006, by contending that there are some errors apparent on the face of the order dated 29.08.2018. Consequently, the Assessing Officer issued a notice on 11.09.2018 to the petitioner and called upon them to appear for personal hearing on 21.09.2018 at 11.00 a.m., also by specifically indicating that no further extension of time will be granted on any account. Thereafter, the second impugned order dated 24.09.2018 under Section 84 was passed by determining the total and taxable turn over. The only objection of the petitioner raised against the respondent is that he has called upon the petitioner to appear for personal hearing on 21.09.2018, without even knowing that the said day is a public holiday on account of Moharam. Therefore, it is contended that the petitioner could not appear on that day and consequently, the respondent, without fixing any further date for personal hearing, is not justified in concluding the proceedings filed under Section 84 of the TNVAT Act, 2006, which in effect is in violation of principles of natural justice.

4. The learned Government Advocate for the respondent submitted that the petitioner was afforded with sufficient opportunity on many occasions to furnish required forms, which they failed to utilize, except furnishing few forms. Therefore, she contended that the Assessing Officer is left with no other option, except to pass the impugned order. However, she fairly admitted to the position that the day fixed for personal hearing viz., 21.09.2018 is a public holiday and therefore, the Assessing Officer ought not to have fixed the said day and issued notice to the petitioner to appear on that day.

5. From the above stated facts and circumstances, it is evident that the Assessing Officer has violated the principles of natural justice in not affording personal hearing to the petitioner, when admittedly, the day fixed by him happens to be a public holiday. Therefore, it is evident that the petitioner was reasonably prevented from appearing on that day before the respondent, who in turn also was not expected to attend the office on a holiday. Therefore, without expressing any view on the merits of the matter, this Court is inclined to set aside only the order dated 24.09.2018 passed under Section 84 of the TNVAT Act, solely on the ground of violation of principles of natural justice. Since the petitioner has already approached the

respondent and filed Section 84 petition as against the order of assessment, which is also impugned in this writ petition, this Court is not inclined to express any view on the said assessment order at this stage.

6. Accordingly, this writ petition is partly allowed and the impugned order dated 24.09.2018 passed under Section 84 of the TNVAT Act, 2006, is set aside. Consequently, the matter is remitted back to the respondent for passing fresh order, after giving due opportunity of personal hearing to the petitioner, by indicating the same in writing. It is made clear that this Court is not expressing any view on the merits of the assessment as well as merits of the order dated 24.09.2018, as it is for the respondent to consider and pass fresh order accordingly. The respondent shall complete the entire process and pass fresh order under Section 84 of the TNVAT Act, 2006, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The State Tax Officer
Sowcarpet Assessment Circle
Wavoo Manson, Rajaji Salai,
Chennai-600 001.

+1cc to Ms.C.Rekhakumari, Advocate Sr.68445
+1cc to the Special Government Pleader Sr.68597

W.P.No.26130 of 2018

mr[co]
srg 30/10/2018