IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-06-2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.403, 408, 411, 417, 427, 433 and 437 of 2019
And
W.M.P.Nos.408, 410, 414, 415, 417, 418, 427, 429, 434, 438, 439, 440, 442, 444 of 2019

M/s.Vaibhav Infrastructure (Defunct),
Represented by its Authorised Signatory
J.Sekar, No.4, 10-A, East Cross Road,
Gandhi Nagar,
Vellore-632 006,
Vellore District. .. Petitioner in all WPs

..Vs..

The State Tax Officer,
Gudiyatham (East) Circle,
Gudiyatham,
Vellore District. .. Respondent in all WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling for the records on the file of the respondent in his impugned proceedings made in herein in Order Nos.TIN:33184244567/2012-13, TIN:33184244567/2011-12, TIN:33184244567/2015-16, TIN:33184244567/2014-15, TIN:33184244567/2010-11, TIN:33184244567/2009-10 and TIN:33184244567/2013-14 respectively dated 27.6.2018 and quash the same as illegal and contrary to the Scheme of the Act.

For Petitioner in all WPs : Mr.R.Hemalatha for S.Rajasekar
For Respondent in all WPs : Mr.G.Dhanamadhri,
Government Advocate.

C O M M O N   O R D E R

This common order will govern all these seven writ petitions. In other words, this common order will dispose of these seven writ petitions.

2. Mr.S.Rajasekar, learned counsel on record for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate on behalf of lone official respondent, are before this Court.

3. These writ petitions arise under 'Tamil Nadu Value Added Act, 2006 (Tamil Nadu Act No.32 of 2006)', hereinafter referred to as 'TNVAT Act' for brevity.

4. Writ petitioner is a Contractor, who was executing various civil contract works for Government Departments.

5. Writ petitioner is an assessee on the file the State Tax officer, Gudiyatham (East) Circle, Gudiyatham, Vellore District i.e., sole respondent before this Court.

6. Writ petitioner has already closed down his business on and with effect from 29.1.2015.

7. These seven writ petitions pertain to seven assessment orders, being successive assessment years from 2009-2010 to 2015-2016.

8. It is the case of the writ petitioner that writ petitioner was filing monthly Returns under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of the TNVAT Act.

9. To be noted, the deemed assessment was as of 30th June of the succeeding calendar year upto the assessment year 2010-2011 and it is 31st October of the succeeding calendar year with effect from 2011-2012. As these seven assessment orders, which form subject matter of instant writ petitions travel across these two regimes, it has become necessary to this aspect i.e., deemed assessment being as of 30th June upto 2011 and as of 31st October from 2012.

10. It is the case of writ petitioner that as they were doing civil contract works for Government and Governmental authorities, tax was deducted at source and the Government/ Governmental authorities have to give certificates for 'deduction of tax at source' ('TDS' for brevity). In other words, the 'TDS' has been made under TNVAT Act by Government/ Governmental authorities for which writ petitioner had done contract work, but there was delay on the part of Government/Governmental authorities in issuing TDS Certificates.

11. Under the aforesaid circumstances, the business premises of writ petitioner was inspected by the Enforcement Wing Officers of the Tax Department from 16.8.2016 to 30.8.2016 (both days inclusive). In this inspection, according to Enforcement Wing Officers, certain defects and discrepancies were noticed.

12. Pursuant to aforesaid inspection by the Enforcement Wing Officers, seven separate notices were issued to writ petitioner for the seven assessment years, which form subject matter of instant writ petitions. In these notices, writ petitioner was called upon to send objections if any and also file documents in support of the same. To these seven separate notices, writ petitioner sent seven separate replies, all dated 12.12.2017. What is of utmost relevance is, in these seven separate replies, all dated 12.12.2017, writ petitioner, after setting out objections, has specifically sought for a personal hearing. There is no disputation or disagreement in this regard.

13. Notwithstanding the replies from writ petitioner, more particularly, replies, wherein writ petitioner has specifically sought for personal hearing, respondent passed seven separate revised assessment orders for the aforementioned seven assessment years and all these seven revised assessment orders are dated 27.6.2018. These seven revised assessment orders have been called in question in each of the seven writ petitions and they shall collectively be referred to as 'impugned orders' in plural and 'impugned order' in singular.

14. A perusal of the impugned orders reveals that there is no whisper about personal hearing.

15. There is also no disputation or disagreement before this Court that personal hearing was not granted to writ petitioner.

16. Be that as it may, adverting to each of the impugned orders, learned counsel for writ petitioner submitted that respondent has accepted the proposal of the Enforcement Wing, without making an independent assessment. Notwithstanding separate replies from writ petitioner for each assessment year and this according to learned counsel for writ petitioner is contrary to what has now come to say as Narasus principle being principle laid down by this Court in (1) Narasus Roller Flour Mills (2) Narasus Sarathy Enterprises Private Ltd. vs. Commercial Tax Officer (Enforcement Wing), Sankagiri And Another, reported in [2015] 81 VST 560 (Mad).

17. With regard to the personal hearing aspect of the matter, learned counsel for writ petitioner pressed into service as Circular, being Circular No.7/2014 (BB1/3589/2014) dated 3rd February, 2014 issued by the Principal Secretary / Commissioner of Commercial Taxes.

18. Adverting to paragraph-3(a)(iii) of the said Circular, learned counsel for writ petitioner emphatically submitted that personal hearing is imperative. Paragraph-3(a)(iii) of the said Circular, reads as follows:

> '3. In the light of the above, the following circular instructions are issued which must be scrupulously followed by Assessing Officers while passing assessment orders. Joint Commissioners / Deputy Commissioners should verity at random the assessment orders passed by the Assessing Officer while taking up cursory inspection and ensure compliance with these basic procedures while passing orders.
>
> (a) Passing of orders:
>
> Fifteen days time-limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process:
>
> (i) .. ..
>
> (ii) .. ..
>
> (iii) As the provision in the TNVAT Act stipulates the conditions of granting of personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not.'

19. There is no disputation or disagreement before this Court that the aforesaid Circular is now operating and is binding on the sole respondent.

20. Though the circular is only in a recommendatory tone, owing to the nature of objections/facts and circumstances of this case, this Court is of the view that it would have been desirable to give a personal hearing.

21. With regard to the plea pertaining to violation of Narasus principle, learned Revenue Counsel adverting to the counter submitted that the writ petitioner in any event had not produced TDS Certificates and therefore it cannot be gainsaid that Narasus principle has been violated.

22. Responding to this plea, learned counsel for writ petitioner, on instructions, submitted that the TDS Certificates are now available and if personal hearing is granted, writ petitioner will be able to produce the TDS Certificates relevant to the aforesaid seven assessment years.

23. In the light of the narrative thus far, this Court passes the following order:

> (a) Each of the seven impugned orders, namely, TIN: 33184244567/2012-13, TIN:33184244567/2011-12, TIN: 33184244567/2015-16, TIN: 33184244567/2014-15, TIN: 33184244567/2010-11, TIN: 33184244567/2009-10 and TIN: 33184244567/2013-14, all dated 27.6.2018 are set aside. To be noted, these orders are set aside solely for facilitating personal hearing. In other words, this Court does not express any opinion or view on merits of the matter.
>
> (b) Personal hearing is now fixed on 17.7.2019 (Wednesday) at 12.00 Noon in the office of the sole respondent.
>
> (c) Writ petitioner, on instructions, undertakes to go before respondent on the aforesaid date, time and venue and produce all documents in support of his objections and in support of his plea.
>
> (d) If the writ petitioner does not avail the personal hearing on the aforesaid date, time and venue, all the impugned orders will stand revived.
>
> (e) If the writ petitioner avails the personal hearing on the aforesaid date, time and venue, the respondent shall take into account all the objections/documents pressed into service by writ petitioner in the personal hearing and pass revised assessment orders afresh for each of the seven assessment years, within eight weeks from the date of the personal hearing i.e., on or before 11.9.2019.
>
> (f) The revised assessment orders passed in the aforesaid manner shall be communicated to the writ petitioner under Due Acknowledgment in accordance with the Rules in this regard under TNVAT Act.

24. All the seven writ petitions are disposed of with the above directions. 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

Svn

To

The State Tax Officer,
Gudiyatham (East) Circle,
Gudiyatham,
Vellore District.

+1 cc to M/s.R.Hemalatha, Advocate, S.R.No.51934

+1 cc to the Government Pleader, S.R.No.52487

WPs 403,408,411,417,
427,433 and 437 of 2019

RR(CO)
SSM(01/08/2019)