IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.3166 of 2019

Tvl.Sri Venkateswara Stores
Represented by its Proprietor
No.1, Old Mahabalipuram Road,
Thiruporur. ...Petitioner

vs.

The Assistant Commissioner (CT)
Thirukazhukundram Assessment Circle (FAC)
No.42, Wahab Nagar,
Thirukazhukundram - 603 109. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent vide his order of assessment in TIN.33541601895/2015-2016 dated 09.01.2018 and quash the same as illegal, unconstitutional for having been passed in violation of principles of natural justice and further directing the respondent to pass fresh orders in accordance with law after granting an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.A.Ravichandran
For Respondent : Mrs.Dhana Madri
Government Advocate (Tax)

O R D E R

This writ petition is filed challenging the order of assessment dated 09.01.2018 relevant to the assessment year 2015-2016.

2. Heard both sides.

3. The main contention raised in this writ petition is that the impugned order was passed in violation of principles of

natural justice. It is also contended that the Assessing Officer has erroneously invoked the provision under Section 27 of the Tamil Nadu Value Added Tax, Act, 2006, for revising the assessment on the reason that incorrect and incomplete returns were filed. Therefore, it is contended that the said revision can be made only under Section 22(4) of the TNVAT Act and not under Section 27 of the TNVAT Act.

4. The learned counsel for the petitioner reiterated the above contention and further submitted that though the petitioner has challenged the assessment order, has however, paid the tax and penalty under protest and therefore, the matter may be remitted back to the Assessing Officer to redo the assessment once again after giving an opportunity of hearing.

5. The learned Government Advocate for the respondent submitted that the petitioner has not filed any reply to the notice of proposal and therefore, they are not entitled to seek any indulgence from this Court. She also fairly submitted that wrong quoting of provision was made in the impugned order.

6. There is no dispute to the fact that before passing the impugned order, the Assessing Officer has issued the notice of proposal dated 29.11.2017. The fact remains that the petitioner has not filed any reply. Only after passing the impugned order, the petitioner has come forward to challenge the same, by contending that he was not given an opportunity of personal hearing.

7. Considering the above stated facts and circumstances, more particularly, the fact that the petitioner has not chosen to file any reply and that he has also paid the tax and penalty, seems to be under protest, this Court is not inclined to entertain the present writ petition and probe the matter further, since the petitioner can approach the Appellate Authority and file regular appeal and canvass all the points on merits before such authority.

8. Accordingly, without expressing any view on the merits of the matter, this Writ Petition is disposed of, by granting liberty to the petitioner to file such an appeal before the concerned Appellate Authority, within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed within the time stipulated, the concerned Appellate Authority shall consider the same and pass orders on the same on

merits and in accordance with law, without reference to the period of limitation. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mk

To

The Assistant Commissioner (CT)
Thirukazhukundram Assessment Circle (FAC)
No.42, Wahab Nagar,
Thirukazhukundram - 603 109.

+1 cc to Mr.A.Ravichandran Advocate sr86739
+1 cc to the Government Pleader (T) sr87448

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