IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.3358 of 2019
and
W.M.P.No.3642 of 2019

M/s. Shakthi Power System
Represented by its Proprietor
Mr.K.Purushothaman,
No.196, Srinivasa Mandapam Road,
Gowtham Nagar East,
Salamadu, Villupuram - 605602. ... Petitioner

Vs.

The Deputy Commercial Tax Officer (CT),
Villupuram - II Assessment Circle,
Villupuram. ... Respondent

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN No.33094702214/ 2014-2015 and quash the impugned proceedings dated 14.03.2016 as passed contrary to the principles of natural justice and against the provisions of the TNVAT Act.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.M.Hariharan
Additional Government Pleader(Taxes)

O R D E R

This writ petition is filed challenging the order of assessment dated 14.03.2016 relevant to Assessment Year 2014-2015.

2. The main grievance of the petitioner is that the impugned assessment order was passed without putting the petitioner on notice and thus, it violates the principles of natural justice.

3. On the other hand, it is contended by the Revenue that

the notice of proposal sent to the petitioner dated 14.01.2016 by registered post, was returned with an endorsement left and thus, the notice was served by affixture at the place of business.

4. Mr.P.Rajkumar, learned counsel appearing for the petitioner, invited this Court's attention to Rule 19 of the Tamil Nadu Value Added Tax Rules, 2007 and submitted that even such affixture seems to have been done, not after complying with the other modes of service, as contemplated under Rule 19 namely by serving the said notice at the residential address.

5. Per contra, the learned Additional Government Pleader (Taxes) appearing for the respondent contended that when the notice sent by a registered post was returned with an endorsement left, the affixture was made at the place of business on 25.02.2016 and therefore, it is to be construed that a notice of proposal has been validly served on the petitioner.

6. The point for consideration in this writ petition is to whether there is an effective service of notice of proposal of the petitioner before passing the impugned assessment order.

7. Service of notices, summons or orders and the mode of service of such notice, summons or orders is dealt with in Rule 19 of the Tamil Nadu Value Added Tax Rules, 2007, which reads as follows :-

"Rule 19. Service of notices summons or orders.-

(1) The service on a dealer of any notice, summon or order under the Act or these rules may be effected either electronically or manually in any of the following ways, namely:-

(a) by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative ; or

Explanation - Endorsement by person who delivers the notice, summon or order of having tendered or given will be proof for the purpose of this sub-rule.

(b) if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family; or

(c) by sending it to the address of the dealer by registered post; or

(d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence in the presence of two independent witnesses.

(2) Where any Hindu Undivided Family, firm or other association of persons is partitioned, dissolved or discontinued, notice, summon or order issued under the Act or these rules may be served on any member of the Hindu Undivided Family, any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before such partition dissolution or discontinuance."

8. A careful perusal of the said Rule would clearly indicate that the notice, summon or order may be effected either electronically or manually in any of the following ways viz., (i) by giving or tendering it to such dealer or his manager or agent or the legal practitioner; or (ii) to his authorised representative and if such dealer or his manager or agent or the legal practitioner or his authorised representative is not found, then by giving to any adult member of his family; or (iii) by sending it to the address of the dealer by registered post; or (iv) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place. Therefore, it is evident that the affixture is last resort of serving notice only when the other modes prescribed clause (a), (b) and (c) of Rule 19 are impracticable.

9. In this case, it is seen that except by sending the notice by registered post, it appears that the Assessing Officer has not resorted to the procedure of serving such notice, through modes contemplated under Rule 19(1) (a) and (b). On the other hand, the Assessing Officer, after getting the notice returned from the postal department, has chosen to made the affixture of notice at the place of business. No doubt, the service by affixture is also a valid service, provided it is established that the other modes are not practicable. Therefore, it is evident that though the Assessing Officer is entitled to choose anyone of the modes referred to under Rule 19 (1) (a) to (d), he should be in a position to conclude that the modes of service contemplated under Clause (a), (b) and (c) are impracticable, if he chooses to serve the notice through affixture, as contemplated under clause (d). In other words, only when the Assessing Officer is not in a position to serve notice through the other modes contemplated under clause (a) or (b) or (c), he can resort to the service of notice through affixture. In my considered view, the service through affixture should be attempted as last resort to only when the Authority failed to serve notice through other modes.

10. Hence, I find that the notice affixed on the

petitioner's business premises immediately after the return of the notice sent through RPAD, is not proper service or effective one. Therefore, on that ground, this Court is inclined to interfere with the impugned order of assessment and remit the matter back to the Assessing Officer to redo the same, after hearing the petitioner and his objections.

11. Accordingly, this writ petition is allowed and the impugned assessment order dated 14.03.2016 is set aside and the matter is remitted back to the Assessing Officer on the following terms and conditions :-

(a) The petitioner shall treat the impugned assessment order itself as the notice of proposal.

(b) The petitioner shall give objections within a period of two weeks from the date of receipt of a copy of this order.

(c) On receipt of such objection, the Assessing Officer shall afford an opportunity of personal hearing to the petitioner and pass fresh orders on merits and in accordance with law within a period of four weeks thereafter.

12. It is made clear that this Court is not expressing any view on the merits of the claim made by both parties, as it is for the Assessing Officer to consider and decide afresh.

No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sni

To

The Deputy Commercial Tax Officer (CT),
Villupuram - II Assessment Circle,
Villupuram.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.87625
+1cc to the Special Government Pleader(T), S.R.No.88280

W.P.No.3358 of 2019

PM(CO)
CS/28/11/2019