IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

W.P.No.3416 of 2019
& W.M.P.No.3702 of 2019

Tvl.Hussain Enterprises,
Rep. by its Mr.Haider Hussain,
No.268, (Old.No.188) Linghi Chetty Street,
Chennai-600 001 .... Petitioner

--Vs--

The Assistant Commissioner(ST)
Harbour Assessment Circle,
No.116, Angappa Naicken Street,
1st Floor, Chennai-600 001 ... Respondent

PRAYER in WPs: Writ Petitions filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for records on the file of the respondent in CST/81874/2016-17 dated 04.01.2019 quash the same and direct the respondent to redo the assessment by accepting the Form I on the inter-state sales turnover effected to the units located in Special Economic Zone (herein after called as SEZ).

For Petitioner : Mr.S.N.Kirubanandam

For Respondents : Mr.M.Haribabu
Additional Government Pleader

O R D E R

The petitioner in this writ petition challenges an order of assessment passed by the Assistant Commissioner (ST), Harbour Assessment Circle dated 04.01.2009 for the period 2016-17, passed in terms of the provisions of the Central Sales Tax Act, 1956 (in short the 'Act').

2. Though submissions have been made by Mr.S.N.Kirubanandam, learned counsel for the petitioner on the merits of the matter, the ground seriously pursued by him relates to non-furnishing of a reasonable opportunity of hearing including a personal hearing to the petitioner prior to finalization of assessment.

3. Mr. Haribabu, learned Additional Government Pleader for Commercial Taxes Department, upon instructions, points out to the notice issued by the Assessing Officer dated 17.09.2018 wherein the Officer in conclusion states as follows:

> Objection if any to the above proposal may be filed in writing with relevant document within 15 days from the date of receipt of this notice, Further they are afford personal hearing in this regard within the stipulated time, Otherwise orders will be passed as proposed.

4. Thus, according to him, the statement of the petitioner to the effect that no opportunity has been granted to him, is incorrect.

5. I disagree. The opportunity of personal hearing to be extended to the petitioner cannot be in vague and uncertain terms, relating to a range of days, as the Assessing Officer has done in the present case. It is unclear, as to whether, the Assessing Officer expects the petitioner to visit his office on a daily basis till such time the Officer is present/available and in a position to take into account his submissions. This is clearly not the intention of the statute and personal hearing, has to be fixed by date and time to be effective.

6. In fact, pursuant to notice dated 17.09.2018, the petitioner has filed reply dated 31.10.2018 wherein, in conclusion, while requesting withdrawal of the proposal contained in the notice issued by the Assessing Officer it has specifically requested an opportunity of personal hearing to substantiate its stand. Admittedly, this opportunity has not been granted to the petitioner and the Assessing Officer has proceeded to pass the impugned order dated 04.01.2019 without fixing a date and calling upon the petitioner to appear before him and substantiate its stand.

7. In the light of the aforesaid discussion, I have no hesitation in concluding that the principles of natural justice stand violated in the present case.

8. In this view of the matter, the impugned order of assessment is set aside. The petitioner will appear before the respondent on 07.03.2019 at 2.30 P.M. along with written

submissions or any material that it may chose to rely on to substantiate its stand. Orders shall be passed in accordance with law by the respondent after affording due opportunity to the petitioner, within a period of six(6) weeks from date of conclusion of personal hearing. The writ petition is allowed in the above terms. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner(ST)
Harbour Assessment Circle,
No.116, Angappa Naicken Street,
1st Floor, Chennai-600 001

+1 cc to Mr.S.N.Kirubanandam, Advocate, S.R.No.18569

+1 cc to the Special Government Pleader, S.R.No.18988

W.P.No.3416 of 2019
& W.M.P.No.3702 of 2019

PM(CO)
SSM(06/03/2019)