IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.4554, 4556, 4558 and 4560 of 2019 and
W.M.P.Nos.5143, 5147, 5148 and 5150 of 2019

Venkateswara Constructions
Rep.by its Proprietor Mr.S.Saravanan,
No.12/15, Vivek Nagar
Kolathur, Chennai - 600 099 .... Petitioner in all the W.Ps

Vs

1.The State of Tamil Nadu
rep.by its Secretary to Government
Commercial Taxes and Registration Department
Fort St.George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes
Commercial Taxes Department
Ezhilagam, Chepauk, Chennai 600 005.

3.The Superintendent / Deputy Commercial Tax
Officer, Velachery Assessment Circle,
Chennai 600 061.

4. The State Tax Officer / Commercial Tax Officer
Surapattu Assessment Circle, No.27, Makkaram
Garden, Kolathur, Chennai - 600 099.
.... Respondents in all W.Ps.

Prayer in W.P.No.4554/2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari filed mandamus to call for the records relating to the order of assessment in his Procd.R.C.No.63/2018 (Assessment Year 2012-13) dated 28.11.2018 and quash the same and to direct the fourth respondent to afford an opportunity of personal hearing and to produce the Form-T, the certification of deduction of tax at source and redo the assessment for the Assessment Year 2012-13.

Prayer in W.P.No.4556/2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari filed mandamus to call for the records relating to the order of assessment in his Procd.R.C.No.63/2018 (Assessment Year 2015-16) dated 28.11.2018 and quash the same and to direct the fourth respondent to afford an opportunity of personal hearing and to produce the Form-T, the certification of deduction of tax at source and redo the assessment for the Assessment Year 2015-16.

Prayer in W.P.No.4558/2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari filed mandamus to call for the records relating to the order of assessment in his Procd.R.C.No.63/2018 (Assessment Year 2013-14) dated 28.11.2018 and quash the same and to direct the fourth respondent to afford an opportunity of personal hearing and to produce the Form-T, the certification of deduction of tax at source and redo the assessment for the Assessment Year 2013-14.

Prayer in W.P.No.4560/2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari filed mandamus to call for the records relating to the order of assessment in his Procd.R.C.No.63/2018 (Assessment Year 2014-15) dated 28.11.2018 and quash the same and to direct the fourth respondent to afford an opportunity of personal hearing and to produce the Form-T, the certification of deduction of tax at source and redo the assessment for the Assessment Year 2014-15.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Ms.G.Dhanamadhiri
Government Advocate

O R D E R

This common order will dispose of all these four writ petitions.

2. The writ petitioner and the respondents are the same in all the four writ petitions.

3. Mr.M.Md.Ibrahim Ali, learned counsel on record and Ms.Dhana Madhiri, learned Government Advocate on behalf of the respondents are before this Court.

4. These writ petitions are listed under the caption 'ADJOURNED ADMISSION' in the list today. Be that as it may, with the consent of learned counsel on both sides, ie., learned counsel for the writ petitioner and revenue counsel, these writ petitions are taken up, are being heard out and are being disposed of.

5. These writ petitions arise under the 'Tamil Nadu Value Added Tax Act, 2006' (hereinafter referred to as TNVAT Act for brevity) . This Court is informed by the learned counsel on

both sides that facts are common and central theme / core issue in all these four writ petitions, is one and the same. It is also the further common submission of both sides, without any disputation or disagreement, that all these four writ petitions pertain to four successive assessment years viz., 2012-13, 2013-14, 2014-15 and 2015-16.Obviously, the numerical values will also change. This impelled this Court to dispose of all these four writ petitions by a common order.

6. Though several grounds have been urged in the affidavit filed in support of each of the writ petitions and though the learned counsel for the writ petitioner commenced by making some submissions on merits of the matter, learned counsel restricted his submission to one issue ie., violation of 'Natural Justice Principles' (NJP for brevity).

7. Before this Court proceeds further, it is to be noted that the cause title describes the petitioner as Venkateswara Constructions, Rep.by its Proprietor Mr.S.Saravanan, No.12/15, Vivek Nagar, Kolathur, Chennai - 600 099.

8. Learned counsel for the writ petitioner submits, on instructions, that Mr.S.Saravanan is carrying on business in the name and style 'Venkateswara Constructions' as Sole Proprietor.

9. It is submitted by learned counsel for the writ petitioner that the writ petitioner is carrying on work in the nature of civil construction work, inter alia for Chennai Corporation.

10. Considering the narrow compass, in which the instant writ petitions now turn, more particularly in the light of the trajectory which the hearing has taken today, it may not be necessary to advert to further details / particulars or elaboration qua factual matrix.

11. Suffice to say that there was a surprise inspection conducted on the business premises of the writ petitioner on 15.03.2017 and this surprise inspection, which commenced on 15.03.2017 was spread over a period of time and last of such inspections was on 05.06.2017.

12. In the surprise inspections made by the enforcement wing officials, certain documents, along with connected registers including monthly returns, purchase bills, sales bills and audited financial statements were looked into. Thereafter, the enforcement wing noticed certain defects, but suffice to say that the primary defect noticed, pertained to deduction of tax at source. As already alluded to supra, learned counsel for the writ petitioner, commenced by making some submissions on merits ie., with regard to whether the deduction of tax at source will

apply to the writ petitioner, but subsequently restricted and abridged his submissions to the lone submission, touching upon 'NJP'.

13. Therefore, this Court refrains itself from expressing any opinion whatsoever on the merits of the matter. This is more so in the light of the nature of the order, which this Court proposes to pass in disposing of the instant four writ petitions on hand.

14. Adverting to the four separate case files and typed set of papers therein, it was submitted by learned counsel for writ petitioner that the writ petitioner has sought for personal hearing, but the same has not been granted.

15. According to the learned counsel for the writ petitioner, the passing of the impugned assessment orders, without granting an opportunity of personal hearing, vitiates the impugned assessment orders. It is the further submission of learned counsel for petitioner that the writ petitioner is entitled to have the orders set aside on the sole ground of violation of 'NJP'.

16. To buttress his submissions, learned counsel for the petitioner pressed into service a judgment of a Honourable Division Bench of this Court made in "SRC PROJECTS PVT LTD -VS- COMMISSIONER OF COMMERCIAL TAXES, CHENNAI AND ANOTHER" reported in (2010) 33 VST 333 (Mad).

17. In the aforesaid SRC Projects case, a Honourable Division Bench of this Court has held that when there is a specific demand for personal hearing for showing cause, the request has to be acceded to.

18. To be noted, the SRC Projects Pvt Ltd., judgment was rendered by the Honourable Division Bench of this Court, while dealing with Section 16(1)(a) of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act for brevity). However, in the instant case, the relevant provision is Section 27(1) of the TNVAT Act and more particularly, the proviso to Sub Sections 1 and 2 of Section 27 of the TNVAT Act.

19. For the purpose of clarity, this Court deems it proper to extract Section 27 of the TNVAT Act along with the two sub sections and the proviso thereto, which reads as follows.

> 27. Assessment of escaped turnover and wrong availment of input tax credit (1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of 1[six

years from the date of assessment], determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.

(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of 2[six years from the date of assessesment], reassess the tax due after making such enquiry as it may consider necessary.

(2) Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of 2[six years from the date of assessment], reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary: Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.

(3)........

(4)........

(5) ....

(6) ....

(7)........

(8).........”

20. It is submitted by the learned counsel on both sides, without any disputation or disagreement that Section 16(1) of the TNGST Act and Section 27(1) of TNVAT Act are in pari materia. Therefore, this Court deems it proper to extract Section 16(1)(a) of the TNGST Act, and the same reads as follows.

“Section 16. Assessment of escaped turnover. - (1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (2), at any time within a period of five years from the *[date of order of the final assessment by the assessing authority], determine to the best of its judgement the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.”

21. From the narrative thus far, it follows as a inevitable sequitur that the SRC Projects principle laid down by a Honourable Division Bench of this Court will apply in all force to the case on hand.

22. If that be the case, it follows as a further sequitur that there is violation of 'NJP', as personal hearing sought for by the writ petitioner has not been accorded to the petitioner.

23. In the light of the aforesaid discussion, the following order is passed.

(a) All the four impugned assessment orders being Procd.R.C.No.63/2018 (Assessment Year 2012-13), Procd.R.C.No.63/2018 (Assessment Year 2013-14), Procd.R.C.No.63/2018 (Assessment Year 2014-15) and Procd.R.C.No.63/2018 (Assessment Year 2015-16), are set aside.

(b) The assessment orders are set aside solely on the ground of violation of 'NJP' (not acceding to the request for personal hearing), without expressing any opinion whatsoever on merits.

(c) The fourth respondent need not issue notice afresh, but shall afford an opportunity of personal hearing to the writ petitioner.

(d) The personal hearing shall be on 08.07.2019 (Monday) at 12.00 Noon and the venue shall be the office of the fourth respondent.

(e) If the writ petitioner does not avail of the aforesaid opportunity on 08.07.2019,the impugned orders will stand revived automatically without reference to this Court.

(f) If the writ petitioner avails the opportunity of personal hearing on 08.07.2019, the fourth respondent shall pass assessment orders afresh, within four weeks therefrom and the same shall be communicated to the writ petitioner in accordance with the rules in this regard under the TNVAT Act.

24. These four writ petitions are disposed of with the above directions. However, there shall be no order as to the costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

KST

To

1.The Secretary to Government
Commercial Taxes and Registration Department
Fort St.George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes
Commercial Taxes Department
Ezhilagam, Chepauk, Chennai 600 005.

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Officer, Velachery Assessment Circle,
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Surapattu Assessment Circle, No.27, Makkaram
Garden, Kolathur, Chennai - 600 099.

+1cc to Mr.M.Md.Ibrahim Ali, Advocate SR.No.47649

W.P.Nos.4554, 4556,
4558 and 4560 2019

BR(CO)
GMY(08/07/2019)