IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.6179 of 2019
and W.M.P.No.7016 of 2019

M/s. Sree Sai Ram Builders,
Represented by its Partner,
Mrs. S.Tamilarasi,
Sri Kowshikam, Ground Floor,
No.19/7, Meenakshi Street,
Perambur, Chennai - 600 011. .. Petitioner

vs.

1. The State of Tamil Nadu,
   Represented by its Secretary to Government,
   Department of Commercial Taxes & Registration,
   Ft. St. George, Chennai - 600 009.

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

3. The Commercial Tax Officer,
   Sembium Assessment Circle,
   Chennai - 600 099. . Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certioraified Mandamus, to call for the records relating to the order passed by the 3rd respondent in his TIN No.33721045404/2015-16 dated 22.10.2018 and the notice TIN No.33721045404/2015-16, dated 12.02.2019 to quash the same and to direct the respondents to pass the order after affording an opportunity of personal hearing and to pass fresh order of Assessment for the assessment year 2015-16 and thus render justice.

For Petitioner : Mr. M.MD.Ibrahim Ali

For Respondent : Mr.V.Haribabu,
Additional Government Pleader

ORDER

Mr.M.Md.Ibrahim Ali, learned counsel on record for the writ petitioner and Mr.V.Haribabau, learned Additional Government Pleader on behalf of all the three respondents are before this Court. To be noted, all the respondents are official respondents. With the consent of learned counsel on both sides, the main writ petition itself is taken up, heard out and is being disposed of.

2. Before this Court proceeds further, it may be necessary to read this order in conjunction with and in continuation of earlier proceedings of this Court in the instant writ petition dated 06.03.2019 and 25.04.2019, which read as follows:

Dated: 06.03.2019

> Ms.G.Dhanamadhri, learned Government Advocate, takes notice for the respondents and seeks two weeks time to obtain instructions.
>
> 2. According to the learned counsel appearing for the petitioner, orders have been passed by this Court in Writ Petition Nos.33747 and 33750 of 2018, dated 18.12.2018, in identical assessments for earlier two assessment years. The learned counsel submitted that the entire tax has been paid in this case and what remains to be paid is only the penalty.
>
> 3. There shall be an interim stay the penalty, till 14.03.2019. List the case, on 14.03.2019.'

Dated 25.04.2019

> 'At request of the counsel for the respondent to file counter, list on 10.06.2019.
>
> Interim stay granted on 06.03.2019 and extended on 03.04.2019 stands extended till then.'

3. The aforesaid two proceedings give the trajectory of this writ petition thus far.

4. Though Revenue Counsel had sought time for filing counter affidavit, the entire records pertaining to the instant case are before this Court and Revenue counsel made submissions on the basis of records which are before this

Court.

5. From the submissions made, it came out clearly that a counter affidavit is not necessary. Therefore, with the consent of both sides, the main writ petition itself is being taken up and disposed of as mentioned supra.

6. Be that as it may, short facts necessary for disposal of the instant writ petition are that the writ petitioner assessee is a Civil Works Contractor and Flat Promoter. Writ petitioner assessee is an assessee on the file of third respondent under 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity).

7. It is the case of the writ petitioner that they commenced the purchase of goods for construction of building and were filing monthly returns under TNVAT Act.

8. The place of business of the writ petitioner was inspected by the Commercial Tax Officer along with Deputy Commercial Tax Officer on 26.11.2015 and certain discrepancies were found. Therefore, the third respondent issued a notice dated 29.07.2016 based on the inspection dated 26.11.2015 proposing to levy tax and penalty.

9. Considering the nature of the order, which this Court now proposes to pass, it may not be necessary to advert to what according to the Revenue Department are discrepancies or response of the writ petitioner to the same. What is of utmost relevance is ground (c) in the affidavit filed in support of the writ petition, which reads as follows:

> 'C. It is submitted that the 3rd respondent has not dealt with the entire objections filed on 09.11.2016 and passed the order confirming the proposals contained in the notice dated 24.08.2016 which is only an offshoot of the earlier notice dated 29.07.2016. As per the clarifications issued by the 2nd respondent, the 3rd respondent is duty bound to consider the objections in total and give proper findings either rejecting or accepting the objections. The 3rd respondent in the impugned order has not given any findings with respect to the earlier objections filed by the petitioner dated 09.11.2016.'

10. Therefore, the short point is whether the objections filed by the writ petitioner on 09.11.2016 were

considered by the third respondent while passing order dated 22.10.2018 bearing reference No.TIN No.33721045404/2015-16 and thereafter issuing notice dated 12.02.2019 bearing reference No.TIN No.33721045404/2015-16 (hereinafter 'impugned order' and 'impugned notice' respectively for brevity)

11. Records of the case which are before this Court reveals that the objections sent by the writ petitioner on 09.11.2016 are very much forming part of the file. However the same have not been considered by the third respondent while passing the impugned order and issuing the impugned notice.

12. Another plea which was projected by the writ petitioner is that opportunity of personal hearing had not been granted. In response to this, learned Revenue Counsel drew the attention of this Court to two paragraphs in the impugned order, which read as follows:

> 'A notice dated 24.08.2018 have been served to the dealer on and given an opportunity to file their objections and to avail personal hearing within 10 days during working days from the date of notice served to the dealer that is 26.08.2018.
>
> But the dealer neither submitted their reply nor appear for personal hearing till date. Hence, the order is passed to the best of judgment with available records as detailed below.'

13. Faced with the above situation, learned counsel for writ petitioner very fairly submitted, on instructions, that opportunity of personal hearing had not been availed by the writ petitioner as a specific date and time had not been mentioned. In the considered view of this Court, this is hardly a tenable reason for not availing personal hearing.

14. However, in the light of the objections filed by the writ petitioner on 09.11.2016 not being considered, the impugned order and impugned notice are set aside with a direction to assess afresh considering the objections of the writ petitioner dated 09.11.2016. Though the writ petitioner had not availed the opportunity of personal hearing, as the assessment is going to be redone, it would be appropriate to grant personal hearing afresh to the writ petitioner. Aforesaid entire exercise shall be completed by the third respondent within four weeks from the date of

receipt of a copy of this order.

15. Assessment after being done afresh in the aforesaid manner shall be communicated to the writ petitioner under due acknowledgement within seven working days from the date of such assessment order.

16. Writ petition is disposed of on above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsm
To
1. The Secretary to Government,
State of Tamil Nadu,
Represented by its
Department of Commercial Taxes & Registration,
Ft.St.George, Chennai - 600 009.

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

3. The Commercial Tax Officer,
Sembium Assessment Circle,
Chennai - 600 099.

+1 cc to spl Government Pleader Sr.No. 47100
+1cc to Mr. M.MD.Ibrahim Ali, Advocate SR.No. 46058

W.P.No.6179 of 2019
and W.M.P.No.7016 of 2019

pa (CO)
A.SK(15/07/2019)