IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

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THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

Writ Petition Nos.6062, 6065 & 6067 of 2019
& WMP Nos.6883 to 6885, 6887 & 6890 of 2019
&
6891 of 2019

M/s. Sri Guruvayurappan & Co.,
Rep. by its Partner, N.Vijayakumar,
No.3/145 Unjavelampatti,
Kallipalayam Road, Makkinampatti,
Pollachi, Coimbatore District
.. Petitioner in all W.Ps.

vs.

The Assistant Commissioner (ST),
Pollachi Rural Assessment Circle,
Pollachi, Coimbatore District
.. Respondent in all W.Ps.

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN 33216330002/2012-13; 2013-14 and 2014-15; respectively, dated 23.10.2018, respectively, and to quash the same.

For Petitioner in both W.Ps : Mr.S.Ramanathan

For Respondent in both W.Ps : Mr.M.Hariharan, AGP (Taxes)

COMMON ORDER

The writ petitioner has filed these writ petitions seeking the issuance of a writ of certiorari to quash the proceedings in 33216330002 for the periods 2012-13 to 2014-15.

2. Though writ petitioner has raised some points in regard to the merits of the assessments, Mr.S.Ramanathan, learned counsel appearing for the petitioner, in each of the petitions, would only pursue and seriously canvass the violation of principles of natural justice before me. He points out that

three notices issued prior to completion of assessment, all dated 11.12.2017, identically state as follows:-

> "... You may file your objections if any to the above proposal, in writing, with relevant documents in support thereof, before the undersigned, at his office within 15 days from receipt of this notice. If you wish to have a personal hearing you may appear before the undersigned at his office on the date of filing your objections. Failure to file written objection or to appear for a personal hearing within the time specified date will result in passing orders confirming the above proposals without any further intimation."

3. Mr.M.Hariharan, learned Additional Government Pleader, who takes notice on behalf of the respondent, on instructions, states that, in so far as the show cause notices call upon the petitioner to file its objections as well as offers it an opportunity of personal hearing, the impugned proceedings are valid and the writ petitions may not be entertained.

4. The learned counsel appearing for the petitioner also relies on an order of the learned Single Judge of this Court dated 19.12.2018 passed in Writ Petition Nos.33782 and 33785 of 2018, in similar circumstances where this Court has been pleased to direct the respondent therein to afford another opportunity of personal hearing, being of the view that the opportunity afforded at the first instance was not sufficient putting the petitioner to terms. Bearing in mind, the limited conspectus of the matter, I am inclined to dispose of the writ petitions finally, at the stage of admission, by consent expressed by the learned counsel appearing for both sides before me.

5. The opportunity granted by the Assessing Officer by way of the impugned orders, as extracted supra, is certainly not sufficient. Section 22 of the Tamil Nadu Value Added Tax Act, 2006, in terms of which the present assessments have been completed, require the Assessing Officer to furnish an opportunity of personal hearing prior to completion of assessments. In the present cases, it is seen that the Assessing Officer merely calls upon the Assessee to file its written submissions and to appear for a personal hearing without stipulating a specific date and time for filing of written submissions and personal appearance.

6. This, in my view, does not satisfy the requirement of either affording an opportunity of filing written submissions or a personal hearing, in so far as both parties should have complete opportunity by way of exchange of written notices and replies thereto, prior to personal hearing and adjudication of

the matter and a specific date and time should be stipulated by the Officer in order to render such opportunity effective.

7. It is however a fact that the petitioner has not complied with the opportunity extended for filing of objections on by the notices (all) dated 11.12.2017. In such an instance, the assessment orders are set-aside, but only upon by remittance of 15% of the disputed tax liability, for each of the assessment years, by the petitioner.

8. The petitioner (in all the writ petitions) will appear before the Assessing Officer, at the first instance, on 20.03.2019 at 02.30 pm, along with proof of payment of tax and written submissions, if any. Upon satisfaction of the Assessing Officer that the order of this Court has been complied with, he shall, after hearing the petitioner, pass orders afresh, within a period of six weeks from the date of conclusion of personal hearing.

9. The writ petitions are disposed of, in the above terms. Consequently, the connected WMPs are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srk

To

The Assistant Commissioner (ST),
Pollachi Rural Assessment Circle,
Pollachi, Coimbatore District.

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.20638
+1cc to the Special Government Pleader, S.R.No.21690

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GJII(CO)
CS/22/04/2019