IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.03.2019

CORAM
THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

Writ Petition No.6164 of 2019
& WMP Nos.6997 & 7000 of 2019

M/s. Alagu Constructions,
Rep. by its Proprietor, K.K.Karthik,
No.71/70 Amman Eswaran Kovil Street,
Mahalingapuram, Pollachi,
Coimbatore .. Petitioner

vs.

The Assistant Commissioner (ST),
Pollachi (East) Circle,
Pollachi, Coimbatore District .. Respondent

Prayer:- Petition 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 33092262470/2014-15, dated 25.10.2018 and to quash the same.

For Petitioner : Mr.S.Ramanathan

For Respondent : Ms. G.Dhanamadhri,
Govt. Advocate (Taxes)

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O R D E R

The writ petitioner has filed this writ petition seeking the issuance of a writ of certiorari to quash the proceedings in TIN No.33092262470, dated 25.10.2018 for the period 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 would only pursue and seriously canvass the violation of principles of natural justice before me. He points out that the notices issued prior to completion of assessment, dated 22.12.2017 and 27.09.2018 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. Ms.G.Dhanamadhri, learned Government Advocate (Taxes), who took notice on behalf of the respondent, on instructions, states that, in so far as the show cause notice calls upon the petitioner to file his objections as well as offers the petitioner an opportunity of personal hearing, the impugned proceeding is valid and the writ petition 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 petition 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 order, as extracted supra, is certainly not sufficient. Section 22 of the Tamil Nadu Value Added Tax Act, 2006, in terms of which the present assessment has been completed, requires the Assessing Officer to furnish an opportunity of personal hearing prior to completion of assessment. In the present case, it is seen that the Assessing Officer merely calls upon the Assessee to file his written submissions and also to appear for a personal hearing without stipulated a specific date date and time for filing of written submissions and personal appearance.

6. This, in my view, does not satisfy the requirement of either affording 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, by the notices dated 22.12.2017 and 27.09.2018. In such an instance, the assessment order is set-aside, but only upon by remittance of 15% of the disputed tax liability by the petitioner.

8. The petitioner 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 petition is disposed of, in the above terms. Consequently, the connected WMPs are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

srk

To

The Assistant Commissioner (ST),
Pollachi (East) Circle,
Pollachi, Coimbatore District

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.20639
+1cc to the Government Pleader(Taxes), S.R.No.21692

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RRS(22/04/2019)