IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.08.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.6430 of 2019
&
W.M.P.No.7243 of 2019

M/s.CMR Toyotsu Aluminium India Pvt. Ltd.,
Rep by its Authorised Signatory Mr.Rakesh Kumar Sarda
No.A-4 & A-5 SIPCOT INDUSTRIAL PARK
Pillaipakkam Village
Sriperumbudur – 602 105 .. Petitioner

vs.

The Assistant Commissioner (CT)
Sriperumbudur Assessment Circle
Varadarajapuram – 600 123 .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33411668848/2014-15 dated 30.11.2018 and quash the same and further direct the respondent to pass fresh order after granting an opportunity of being heard as requested by the petitioner after taking into account the records filed on 02.03.2018 along with the objections dated 06.02.2018.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.V.Haribabu
Additional Government Pleader (Taxes)

ORDER

Mr.V.Sundareswaran, learned counsel on record for writ petitioner and Mr.V.Haribabu, learned Additional Government Pleader, who has accepted notice on behalf of sole respondent are before this Court.

2. To be noted, this order has to be read in conjunction with and in continuation of earlier proceedings of this Court dated 12.07.2019, which reads as follows:

'Read this in conjunction with and in continuation of earlier proceedings of this Court dated 07.03.2019 made by my learned predecessor Judge. Revenue Revenue Counsel seeks time to produce records. At request of Revenue counsel list on 17.07.2019.'

3.Pursuant to aforesaid proceedings, Revenue has kept the records ready in the hearing today.

4.In the aforesaid backdrop, with consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

5.In the light of what unfurled in the hearing today, the entire writ petition now tuns on a narrow compass. Therefore, it may not be necessary to set out factual matrix in great detail. Suffice to say that writ petitioner is a dealer under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' which shall hereinafter be referred to as 'TNVAT Act' for the sake of brevity, writ petitioner was filing monthly returns under Section 21 of TNVAT Act and there was deemed assessment under Section 22 (2) of TNVAT Act.

6. When things stood as above, business premises of the writ petitioner was audited by Enforcement Wing officials and they noticed, what according to them, were certain defects qua TNVAT Act and on this basis, Enforcement wing officials made a proposal.

7.Pursuant to the proposal made by the Enforcement Wing, respondent issued a revisional notice dated 07.04.2017 to the writ petitioner and the writ petitioner sent objections dated 05.05.2017. Thereafter, the respondent sent another notice dated 31.01.2018 captioned 'FINAL NOTICE', which evoked objections from the writ petitioner dated 06.02.2018.

8.Under aforesaid circumstances, respondent passed 'revised Assessment Order dated 30.11.2018 bearing reference TIN/33411668848/2014-15', hereinafter 'impugned order' for brevity.

9. There is no disputation or disagreement before this Court that the impugned order is under Section 27(2) of TNVAT Act. Vide the impugned order, penalty under Section 27(4) has also been imposed.

10.With regard to proviso to Section 27(2) of TNVAT Act, it is a common proviso to both sub-sections (1) and (2) of Section 27 of TNVAT Act and it mandates that 'reasonable opportunity to show-cause' has to be given to the writ petitioner before passing the impugned order. What is of utmost relevance is, it does not mandate that a 'reasonable opportunity of being heard' should be granted. To be noted, there is such a mandate i.e., reasonable opportunity of being heard in the proviso to Section 22(4), which is in the nature of best judgment assessment. This is mentioned only for completion of narration of obtaining statutory position, as we are not concerned with Section 22(4) in the instant case. Under proviso to Section 27(2), though the statute makes it imperative to give a reasonable opportunity to show-cause and though the respondent has no statutory obligation to give an opportunity of being heard, in the instant case, a perusal of aforesaid revisional notices dated 07.04.2017 and 31.01.2018 reveal that respondent has chosen to give opportunity of personal hearing to the writ petitioner.

11. Depending on the objections of a dealer/assessee being objections to the revisional notice, if an Assessing Officer is of the considered view that it is necessary to give personal hearing, nothing impedes the Assessing Officer from granting such a personal hearing though it is not statutorily imperative, considering the language in which proviso to Section 27(1) and (2) is couched.

12. In the aforesaid backdrop, in the instant case issue turns heavily on whether opportunity of personal hearing was given to the writ petitioner or not.

13. While the writ petitioner submits that personal hearing has not been granted, learned Revenue counsel emphatically asserts that a personal hearing had been granted and learned Revenue Counsel says so on written instructions from the respondent. It is the specific say of Revenue Counsel that personal hearing has been granted on 05.05.2017, 06.02.2018 and 23.11.2018. The name of the resources/persons who appeared on behalf of the writ petitioner's company have also been mentioned in the written instructions and according to the written instructions, Mr.M.Nirmalkumar and Rakesh Kumar, Assistant Managers with the writ petitioner company appeared for the personal hearing. However, learned counsel for writ petitioner, on instructions, asserts that there was no personal hearing.

14. From the narrative thus far, it emerges clearly that there is a factual dispute about personal hearing.

15. This takes us to the records and files of the Department. Unfortunately, in the files of the Department there is no notice or nothing has been mentioned about the personal hearing though the aforesaid copies of revisional notices dated 07.04.2017 and 31.01.2018 wherein opportunity of personal hearing has been granted form part of the files. Therefore,

this Court is of the considered view that the ideal way to put an end to this controversy is to afford a personal hearing opportunity to the writ petitioner and direct the respondent to redo the revised assessment.

16. To be noted, this Course is being adopted as the Assessing Officer in his discretion has chosen to give an opportunity of personal hearing obviously owing to the nature of revisional notice and objections thereto. In the light of narrative thus far, this Court passes the following order:

a) Impugned order dated 30.11.2018 bearing reference TIN 33411668848 / 2014-15 is set aside. Impugned order is not set aside on merits. In other words, no view or opinion is expressed on merits of the matter. Impugned order is set aside solely on the ground of personal hearing, details of which have been alluded to supra.

b) By consent of both parties, personal hearing is now fixed on 16.08.2019, Friday at 12 Noon in the office of the sole respondent.

c) Writ petitioner shall avail the personal hearing on the aforesaid date, time and venue without fail. It is open to the writ petitioner to produce files and documents that may be necessary to support objections already given.

d) Post personal hearing, the respondent shall redo the revised assessment exercise, pass a revised Assessment Order under Section 27(2), reconsider penalty under Section 22(4) and pass orders as expeditiously as possible and in any event, within six weeks from the date of personal hearing.

e) Order so passed shall be communicated to the writ petitioner under due acknowledgement in accordance with the applicable rules in the statute, i.e., TNVAT Act.

This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner (CT)
Sriperumbudur Assessment Circle
Varadarajapuram - 600 123

+1 cc to Mr.V.Sundareswaran, Advocate, S.R.No.66472

+1 cc to the Special Government Pleader, S.R.No.66679

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KS(CO)
SSM(30/08/2019)