IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.06.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.7870 & 7875 of 2019
and
W.M.P.Nos.8491 & 8493 of 2019

Benny Enterprises
13A, Thadagam Road,
Opp.to Agarwal School,
Somaiyampalayam Road,
Coimbatore - 641 108
Rep.by its Proprietor ..Petitioner in both W.Ps

vs

Assistant Commissioner(ST)
Velandipalayam Assessment Circle
Coimbatore - 18 ..Respondent in both W.Ps

Prayer in W.P.No.7870 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent in his proceedings leading to passing of the Revised Assessment Order vide TIN 33546205321 / 2013-14 dated 06.02.2019, quash the same and direct the Respondent to pass fresh revised assessment order after providing an opportunity of reply and personal hearing.

Prayer in W.P.No.7875 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent in his proceedings leading to passing of the Revised Assessment Order vide TIN 33546205321 / 2014-15 dated 06.02.2019, quash the same and direct the Respondent to pass fresh revised assessment order after providing an opportunity of reply and personal hearing.

For Petitioner : Mr.S.Sathiyanarayanan (in both W.Ps)

For Respondent : Ms.G.Dhanamadhri (in both W.Ps)

C O M M O N   O R D E R

This common order will dispose of both these writ petitions.

2. Mr.S.Sathiyanarayanan, learned counsel on record for the writ petitioner in both these writ petitions and Ms.G.Dhanamadhri, learned Government Advocate on behalf of the sole respondent in both these writ petitions are before this Court.

3. These two writ petitions are listed under the caption 'ADJOURNED ADMISSION' before this Court today.

4. With the consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

5. Short facts that are imperative for appreciating this order are as follows:

a) Writ petitioner is a Manufacturing concern i.e., a sole proprietor concern and it is manufacturing Fly Ash Brick Making Machines.

b) The petitioner is a registered dealer under the 'Tamil Nadu Value Added Tax Act, 2006' ['TNVAT Act'] vide TIN No.33546205321.

c) It is submitted by the learned counsel for writ petitioner that monthly returns are being filed and there is deemed assessment based on the returns under Section 22(2) of TNVAT Act.

d) Under the aforesaid circumstances, the respondent passed an order dated 06.02.2019 being Revised Assessment Order vide TIN33546205321 / 2013-14 i.e., an Assessment order, which shall hereinafter be referred to as 'impugned order' in singular and 'impugned orders' in plural.

e) To be noted, this Court is informed that facts are similar in both these writ petitions and with the exception of assessment years and the numerical values. In other words, first of the two writ petitions namely W.P.No.7870 of 2019 pertains to assessment year 2013-2014 and the second writ petition i.e., 7875 of 2019 pertains to assessment year 2014-2015. Also to be noted, both impugned orders are of even date namely 06.02.2019.

f) As already alluded to supra, the numerical values are different.

g) The impugned orders have been assailed in the instant writ petitions primarily on the ground of violation of 'Natural Justice Principles' ['NJP' for the sake of brevity]

6. Learned counsel for writ petitioner taking this Court through the impugned orders, which have been filed in the typed set of papers, which form part of the case files placed before this Court, submitted that the assessment orders have been passed without giving any opportunity or notice to the writ petitioner assessee.

7. It is submitted that it is necessary to issue notice, call for the assessee's response and thereafter also give a personal hearing, wherein records pertaining to the assessment orders will have to be produced and assessment orders ought to have been passed only thereafter.

8. Learned counsel for writ petitioner submitted that the aforesaid procedure not being adhered to is a clear violation of NJP and therefore, writ petitioner is entitled to have the impugned orders set aside on the ground of violation of NJP.

9. Per contra, responding to the aforesaid submission, learned Revenue counsel submitted that the writ petitioner has been assessed under the 'Central Sales Tax Act, 1956' [CST Act for the sake of brevity] and those proceedings are also of even date.

10. It is submitted that the impugned proceedings are more in the nature of consequential proceedings and therefore, the same have been passed based on the assessment under the CST Act.

11. This Court has carefully considered the rival submissions.

12. Without expressing any opinion on whether the impugned orders are consequent upon the assessment orders made under CST Act, this Court is of the considered view that it cannot be gainsaid that it is not necessary to give notice and opportunity to the writ petitioner assessee before making an assessment under TNVAT Act particularly when there has only been deemed assessment thus far under Section 22(2) of TNVAT Act.

13. It therefore follows as an inevitable sequitur that the impugned orders deserve to be set aside solely on the ground of violation of NJP.

14. Resultantly, this Court sets aside both the impugned orders solely on the ground of violation of NJP and the following set of directions are given:

a) The respondent shall redo the assessments by issuing a fresh notices to the writ petitioner assessee.

b) Writ petitioner assessee, on receipt of notices, shall respond to the same within the time frame stipulated therein without seeking further time.

c) The respondent shall thereafter afford an opportunity of being heard to the writ petitioner i.e., personal hearing, where, supporting documents if necessary, shall be filed before the Assessing Authority.

d) After adhering to the aforesaid procedure, the respondent shall pass assessment orders afresh qua the aforesaid two assessment years namely 2013-2014 and 2014-2015 under the TNVAT Act and in a manner known to law.

15. Writ petitions are disposed of with the above directions. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
Assistant Commissioner(ST)
Velandipalayam Assessment Circle
Coimbatore - 18

+1cc to Mr.S.Sathiyanarayanan , Advocate SR.No. 47604

W.P.Nos.7870 & 7875 of 2019
and
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A.SK(10/07/2019)