IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 07.06.2019
CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.8044 of 2019
and W.M.P.No.8642 of 2019

Vision Hire Entertainments Pvt. Ltd.,
Represented by its Authorised Signatory,
Plot # 356, 1st Cross Street,
Nehru Nagar, Koottivakkam (OMR),
Chennai - 600 096. .. Petitioner

Vs.

Assistant Commissioner (CT)
Adyar Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028. .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the respondent culminating in the impugned order TIN/33620960487/2014-2015 dated 08.02.2019 in respect of Notice No TIN/33620960487/2014-2015 demanding Rs.25,13,268/- (Rupees twenty five lakhs thirteen thousand two hundred and sixty eight only) along with the penalty in form RR of Rs.9,89,618/- (Rupees Nine Lakhs eighty nine thousand six hundred and eighteen only) totalling to Rs.35,02,886/- (Rupees thirty five lakh two thousand eight hundred and eighty six only) and the recovery measures my be initiated and quash the same and direct the respondent not to enforce the impugned order issued by the respondent.

For Petitioner : Ms.S.Gayathri

For Respondent : Mr.M.Hariharan
Additional Government Pleader (T)

O R D E R

Ms. S.Gayathri, learned counsel on record for sole petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing on behalf of sole respondent are before this Court.

2. With the consent of learned counsel on both sides, the main writ petition itself is taken up, heard out and is being disposed of.

3. The entire writ petition turns on a very narrow compass. Writ petition arises out of proceedings under 'Tamilnadu Value Added Tax, 2006' ('TNVAT' for brevity).

4. Writ petitioner, which is a private limited company, is a dealer in Information Technology products and writ petitioner was filing monthly returns under TNVAT Act and the same were being assessed under Section 22 (2) of TNVAT, 2006. Subsequently, the place of business of the petitioner's company was audited by the Enforcement Wing officials of the respondent Department on 25.02.2015, based on which a notice/proceedings dated 14.09.2015 was issued to the petitioner. The petitioner sent a reply dated 15.10.2015.

5. Thereafter, an Assessment Order came to be passed, which was assailed by the writ petitioner in this Court in W.P.No.5901 of 2018. After hearing both sides, W.P.No.5901 of 2018 was disposed of by this Court by a Hon'ble single Judge vide order dated 16.03.2018. Most relevant portion of the order is in paragraph No.5 and the same reads as follows:

> ''5. Having regard to the submissions made by the learned counsel on either side, since the respondent has not considered the objections filed by the petitioner as early as on 15.10.2015, the impugned order dated 30.01.2018 and the notice dated 06.03.2018 are liable to be set aside. Accordingly, the impugned order dated 30.01.2018 the notice dated 06.03.2018 are set aside and the matter is remanded back to the respondent for fresh consideration. The respondent is directed to consider the objections filed by the petitioner and decide the matter afresh after giving due opportunity of personal hearing to the petitioner, on merits and in accordance with law.''

6. Notwithstanding the above said specific and categoric direction made by this Court, respondent embarked upon the exercise of assessment without personal hearing and an Assessment Order dated 08.02.2019 came to be passed. This 'Assessment Order dated 08.02.2019' shall hereinafter be referred to as 'impugned order' for the sake of convenience and clarity.

7. A perusal of the impugned order reveals that the respondent has not given personal hearing to the writ petitioner notwithstanding the specific and categoric direction in this regard in the earlier aforesaid order made by another Hon'ble Single Judge. It is, in the considered view of this Court is, unfortunate.

8. This order is being passed with the hope that such a situation and predicament does not occur in days to come. Be that as it may, a perusal of the impugned order also reveals that the writ petitioner has an appeal remedy by way of appeal before the Appellate Deputy Commissioner (ST) (East), Greams Road, Chennai - 06. In other words, the writ petitioner has an alternate remedy of appeal. Therefore, before exercising the writ jurisdiction and interfering with the impugned order, it may be necessary to make a short observation about alternate remedy qua exercise of jurisdiction under Article 226 of Constitution of India. There are a long line of authorities in this regard, but reference to two Judgements would suffice and they are Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110] and K.C.Mathew case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85].

9. What can be deduced from the long line of authorities, more particularly aforesaid judgment of Hon'ble Supreme Court is that the alternate remedy is essentially not an absolute rule. It is a rule of discretion and it is not a rule of compulsion. Though it is not an absolute rule, exercise of writ jurisdiction notwithstanding alternative remedy with regard to fiscal statutes has a unique rigour attached to it. This has been laid down by Hon'ble Supreme Court in Satyawati Tandon Case.

10 However, a careful perusal of K.C.Mathew case reveals that Hon'ble Supreme Court has also laid down exceptions to the rule of Alternate remedy and the exceptions broadly are

a) lack of jurisdiction

b) violation of 'principles of natural justice' ('NJP' for brevity) and

c) alternate remedy being ineffective or in other words alternate remedy is not being efficacies.

11. To be noted the aforesaid adumbration is not exhaustive, but are broad heads for the limited purpose of disposal of the instant writ petition.

12. From the narrative thus far, it emerges clearly that in the instant case, there has been violation of NJP. It is not only violation of NJP, but it is violation of NJP on the teeth of specific directions of this Court in the aforesaid previous order ie., order directing the respondent to give an opportunity of personal hearing.

13. Learned Revenue Counsel on verification of records submits that it is a matter of fact that no opportunity of personal hearing has been given to the writ petitioner.

Therefore, it follows as an inevitable and indisputable sequitur that there is a clear violation of NJP principles.

14. Therefore, there is no difficulty in exercising writ jurisdiction and interfering with the impugned order notwithstanding alternate remedy in the instant case.

15. In the light of narrative supra and in the light of the trajectory which the hearing has taken today, this Court passes the following order:

(a) Impugned Order dated 08.02.2019 bearing reference TIN/33620960487/2014-2015 made by the sole respondent is hereby set aside.

(b) the respondent is directed to make assessment afresh, keeping in mind the principles laid down by this Court in Narasus Roller Flour Mills case [Narasus Roller Flour Mills Vs. Commercial Tax Officer (Enforcement Wing), Sankagiri and Another reported in [2015] 81 VST 560 (Mad)]. To be noted, Narasus principle is to the effect that proposal given by the audit team of the Enforcement Wing should not be the sole basis for the order. There should be an adjudication, independent proposal/order made by the Enforcement Wing.

(c) Though obvious, it is made clear that while embarking upon the exercise of adjudication afresh, the respondent shall give an opportunity of personal hearing to the writ petitioner i.e., duly authorised representative of the writ petitioner, as writ petitioner is a company (juristic person) and also permit the representative of the writ petitioner company to file documents in support of the submissions and objections which may be raised.

(d) The aforesaid exercise of assessment afresh shall be concluded and orders shall be passed within a period of four weeks from the date of receipt of a copy of this order.

With the above directions, the instant writ petition is disposed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vum/gpa

To

Assistant Commissioner (CT)
Adyar Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

+1cc to Special Government Pleader sr.46532
+1cc to Ms.S.Gayathri, Advocate sr.46452

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nr 16/07/2019