IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 04.06.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.11042, 11262 and 11046 of 2019

&

W.M.P.Nos.11479, 11485 and 11617 of 2019

Ms. V.Rajaveni

.. Petitioner in all Writ petitions

Vs.

Assistant Commissioner (CT)
Velachery Assessment Circle,
No.28, Pasumpon Muthuramalingam Road,
Chennai - 600 028.

.. Respondent in all Writ petitions

COMMON PRAYER : Writ Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records in respect of the Order Nos.TIN 33700983626/2012-13 dated 31.08.2016, TIN 33700983626/2013-14 dated 31.08.2016 and TIN 33700983626/2014-15 dated 01.09.2016 passed by the respondent, quash the same as illegal and direct the respondent to pass fresh orders under Section 5 of the TNVAT Act, after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C. Bakthasiromoni

For Respondent : Ms.Dhanamadhri
Government Advocate (Taxes)

COMMON ORDER



This common order will dispose of these three writ petitions. In other words, this common order will govern all the aforementioned three writ petitions.

2.Mr.C.Bakthasiromoni, learned counsel on record for the writ petitioner and Ms.Dhanamadhri, learned Government Advocate (Taxes) on behalf of sole respondent are before this Court.

3.Though this matter is listed under the caption 'ADJOURNED ADMISSION', by consent of both the learned counsel i.e., counsel for writ petitioner and revenue counsel, these main writ petitions itself are taken up for final disposal, same are heard out and are being disposed of.

4.The subject matter of these writ petitions are common. Three different proceedings of the Assistant Commissioner (CT), Velachery Assessment Circle i.e., sole respondent in these writ petitions, have been called in question in each of these writ petitions.

5.To be noted, two of the impugned proceedings are dated 31.08.2016 bearing reference TIN 33700983626/2012-13 and TIN 33700983626/2013-14 and the third impugned proceeding is dated 01.09.2016 bearing reference TIN 33700983626/2014-15 and the same shall be referred to as 'impugned orders' in plural and 'impugned order' in singular for the sake of convenience and clarity.

6.These impugned orders have been made by the respondent 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 and clarity.

7.Facts, as can be culled out from the case file placed before this Court, are that the writ petitioner is doing civil contract works and is liable to pay monthly returns under TNVAT Act. The Enforcement Wing officials found that the writ petitioner was doing work contracts for Chennai Corporation, but has not reported the turnover to the Department by filing monthly returns. It is not in dispute that the writ petitioner is liable to file monthly returns under TNVAT Act.

8. On verification of records, the respondent found that there is non-disclosure of turnover by the writ petitioner Assessee.

9.Thereafter, the assessment proceedings commenced. The writ petitioner Assessee did not file any objection, but met the respondent in person and enquired about the assessment orders.

10. A perusal of the impugned order reveals that though time was sought for and several opportunities were given for filing objections, the same has not been effectively utilized by the petitioner. Ultimately, the aforesaid impugned Orders came to be passed by the respondent.

11. Learned counsel for petitioner, adverting to the affidavit filed in support of writ petition, submitted that the pivotal ground on which the impugned Assessment Orders are assailed is that 'principles of natural justice' ('NJP' for brevity) have been given a go by. A perusal of the impugned order, viewed in the light of the trajectory of the submissions made today, reveals that the petitioner may not be able to make out a tenable case qua violation of NJP as the petitioner has changed his address and has not intimated the same to the respondent.

12. To be noted, the address as contained in the impugned order reads as follows:

'Tvl. V. Rajaveni,
No.33, Gandhi Street,
Taramani,
Chennai - 600 113.'

The address in the writ petition reads as follows:

'M/s. V.R.Construction,
No.76/121, Nehru High Road,
Nanganallur,
Chennai - 600 061.'

13. Faced with the above situation, learned counsel for petitioner, on instructions, submitted that the petitioner had changed his address in the last two years. There is nothing to show that this has been communicated to the Department immediately after change of address.

14. Ultimately, the petitioner went over to office of respondent, articulated his objections and gave the new address and the impugned orders were served on the petitioner at the new address, which is hand written in the impugned orders and therefore petitioner going over to office of respondent and articulating objections goes outside the realm of disputation. Therefore, though the petitioner will have difficulty in making out a cast-iron case qua NJP, it cannot be gainsaid that there has been complete adherence to NJP taking this case completely outside the realm of one of the exceptions (i.e., NJP violation) warranting exercise of writ jurisdiction qua alternative remedy. It is also to be noted that this view is being taken by this Court in the light of the peculiar facts and circumstances of this case and the trajectory it took in the hearing. Violation of NJP plea is left open and the same this is articulated elsewhere infra in this order.

15. Be that as it may, after the writ petitions were heard out for some time, as much as the writ petitions were taken up for disposal by consent, it was agreed by both counsel that an

order can be passed by consent to the effect that the petitioner Assessee will be given an opportunity to submit all the records within a prescribed time frame subject to the petitioner paying 15% of the disputed tax (obviously excluding penalty) as per the amount set out in the respective impugned orders. In other words, disputed tax and 15% of the same is in accordance with the amount set out in the respective Assessment Orders. Therefore, by consent, the following order is passed:

a) The impugned order of assessment in each of these writ petitions are set aside and the matter is remanded back to the sole respondent for assessment afresh;

b) Petitioner Assessee shall deposit 15% of the disputed tax (obviously excluding penalty) within a week from the date of receipt of a copy of this order. To be noted, this deposit is a condition precedent for assessment afresh.

c) If the petitioner Assessee does not make 15% deposit in the aforesaid manner within one week from the date of receipt of the orders in these writ petitions, the impugned orders will stand revived automatically without further reference to this Court.

d) On deposit of 15% of the disputed tax, as mentioned above, the respondent shall receive all the objections/documents, which shall be submitted by the petitioner Assessee within a fortnight from the date of deposit of 15% of the disputed tax.

e) Thereafter, respondent shall embark upon the exercise of assessment afresh and pass fresh Assessment Orders in accordance with law within eight weeks therefrom.

f) It is submitted that the bank account of the petitioner has been attached by the respondent. If the aforesaid quantum of 15% or more is available, the same shall be appropriated by the respondent and the balance shall be released from attachment. If the balance in the attached bank account does not cover 15% in each of the cases put together, it is the responsibility of the petitioner to make good the same within the aforesaid time.

16. To be noted, as this is a consent order, the question of violation of NJP is left open and therefore, this order will not serve as a precedent with regard to violation or otherwise of NJP principles.

All the three writ petitions stand disposed of by the aforesaid common order. No costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mp/ssd

To

Assistant Commissioner (CT)
Velachery Assessment Circle,
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Chennai - 600 028.

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mp(co)
nr 12/07/2019