IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.10831 of 2019
and
W.M.P.No.11285 of 2019

Thomson Furniture
Represented by its Proprietor
Mr.K.T.Joseph. ... Petitioner

Vs.

The Commercial Tax Officer (ST)/
Sales Tax Officer
N.H.Road Circle
Coimbatore. ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records on the files of the respondent herein in TIN 33021901232/2015-16 dated 28.02.2019 confirmed in notice dated 21.03.2019 quash the same or pass such further or other orders as may be deemed fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.V.Haribau,
Additional Government Pleader (Taxes)

ORDER

Mr.N.Inbarajan, learned counsel on record for writ petitioner and Mr.V.Haribabu, learned 'Additional Government Pleader (Taxes)' ('AGP' for brevity) on behalf of the lone official respondent are before this Court.

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

3. Subject matter of the instant writ petition, arises 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 convenience and brevity.

4. This is the second round of litigation. Subject matter of the instant writ petition, which arises under TNVAT Act, pertains to revised assessment.

5. No sooner than a revised assessment being made vide order dated 17.01.2018 by the sole respondent herein, an earlier writ petition being W.P.No.3392 of 2018 was filed and the same came to be disposed on 04.04.2018, after hearing both sides. The operative portion is contained in paragraph 9, which reads as follows:

> '9. In the result, the writ petition is disposed of by directing the petitioner to file further objections by treating the impugned assessment order as a show cause notice within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the objections, the first respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law. It is open to the petitioner to place all contentions before the first respondent including the decision in Tvl.Bawa Medicals (referred supra). Till fresh orders are passed in terms of the above direction, no coercive action shall be initiated, pursuant to the impugned assessment order. No costs. Consequently, connected miscellaneous petition is closed.

6. It is the pointed case of learned counsel for writ petitioner that though this Court had directed an opportunity of personal hearing to be given, the assessment has been redone without granting personal hearing. This has been articulated in paragraph No.5 of the affidavit filed in support of the instant writ petition and the relevant portion of paragraph No.5 reads as follows:

> '5...... But surprisingly without providing any further opportunity or a personal hearing by a notice dated 21.03.2019 the said application dated 13.03.2019 was rejected. No personal hearing was provided. It was merely stated that they have not filed any objection, whereas their objection dated 28.12.2018 was referred to in the proceedings dated 28.02.2019.'

7. This paragraph No.5 has been met by the sole official respondent in paragraph No.8 of the counter affidavit, which reads as follows:

> '8. With regard to the averments made in para 5 of the affidavit, it is respectfully submitted that the objections filed by the dealer are without any proof. So, final order was passed on 28.02.2019. The letter filed by the petitioner was on 13.03.2019 (i.e.) after passing final orders. Any report or reply filed after passing final order before the Assessing Officer cannot be considered by the Assessing Officer.'

8. Faced with the above situation, learned Revenue counsel consented to a personal hearing being granted to the writ petitioner.

9. Therefore, this is a consent order and will not operate as a precedent.

10. In the light of the aforesaid trajectory, it is not necessary to advert to the facts in greater detail and this Court passes the following order:

a) impugned orders dated 28.02.2019, bearing Reference No.TIN 33021901232/2015-16 and dated 21.03.2019 bearing Reference No. TIN 33021901232/2015-16 are set aside. The impugned orders are set aside solely on the ground of personal hearing not being granted in accordance with the direction given by the learned predecessor's judgment vide order dated 04.04.2018 in W.P.No.3392 of 2018. In other words, this Court does not express any opinion on the merits of the matter.

b) By consent, personal hearing is now fixed on 29.07.2019 at 12.00 noon and the venue shall be the office of the sole respondent.

c) Writ petitioner's counsel, on instructions, undertakes to avail the personal hearing on the aforesaid date and time.

d) If the personal hearing is not availed on the aforesaid date and time, impugned orders will stand revived without any further reference to this Court and the same will be carried to its logical end.

e) If the personal hearing is availed on the aforesaid date and time, sole respondent shall pass revised Assessment Orders afresh within a fortnight therefrom.

f) Revised Assessment order so passed shall be communicated to writ petitioner under due acknowledgement in accordance with Rules under TNVAT Act in this regard.

This writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer (ST)/
Sales Tax Officer
N.H.Road Circle
Coimbatore.

+1cc to the Government Pleader Sr.57681
+1cc to Mr.N.Inbarajan, Advocate Sr.57176

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srg 01/08/2019