IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SUNDAR

W.P.No.10911 of 2019
WMP.No.11347 of 2019

M/s.T.M.Abdul Gafoor & Co.,
rep. by its proprietor
No.2 Rama Pillai Street,
Periament, Chennai-600 003 .. Petitioner

--Vs--

The Assistant Commissioner (ST),(FAC)
Periament Assessment Circle
Chennai-600006 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, calling for the records of the respondent in his proceedings in TIN/33210420083/2010-11 and quash the assessment order dated 12.03.2019.

For Petitioner : Mr.C.P.Priya

For Respondents : Ms.G.Dhana Madhri
Government Advocate

O R D E R

Ms.C.P.Priya, learned counsel on record for the writ petitioner and Ms.G.Dhana Madhri, learned Government Advocate on behalf of the sole respondent in the writ petition are before this Court.

2. Counter and rejoinder affidavits have been filed and the pleadings are complete in the instant writ petition. Be that as it may, by consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. Subject matter of instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 2006)' ('TNVAT Act' for brevity). The writ petitioner is a dealer under

TNVAT Act. Writ petitioner was filing monthly returns under Section 21 of the TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act. When the things stood thus, there was a surprise inspection at the business premises of the writ petitioner dealer on 05.08.2010 by the Enforcement Wing Officials of Tax Department. During the inspection, Enforcement Wing Officials noticed, what according to them are certain defects. On this basis, Enforcement Wing Officials made proposals. Pursuant to such proposals, sole respondent, who is the Assessing Officer concerned, issued a Revisional notice dated 06.05.2015 and the writ petitioner responded to the same vide a communication dated 15.06.2015. To be noted issue of revisional notice was pursuant to order dated 10.10.2014 made by this Court in W.P.No.3662/2014 in an earlier round of litigation but it may not be necessary to advert to the same in detail as what is of significance in the instant writ petition is what unfurled after the aforesaid revisional notice dated 06.05.2015 and reply to the same from the writ petitioner dated 15.06.2015.

4. After the revisional notice and reply to the same, respondent in instant writ peitition, who is the Assessing Officer concerned, in his wisdom thought it fit to hold a personal hearing obviously owing the nature of the revisional notice and the objections thereto. Therefore, the respondent sent a communication dated 05.03.2019 to the writ petitioner fixing the personal hearing on 11.03.2019 (Monday) at 11 A.M. and venue was the office of the sole respondent. This notice dated 05.03.2019, regarding personal hearing, was undisputedly received by the writ petitioner only on 09.03.2019 (Saturday).

5. Learned counsel for the writ petitioner submits, on instructions, that 09.03.2019, being a Saturday, there was difficulty in organizing an adequately instructed resource to go before the respondent on Monday (11.03.2019) for the personal hearing, which was fixed at 11 A.M. in the forenoon. However, a representative of the writ petitioner went over to the office of the respondent on 13.03.2019 and brought this to the notice of the respondent but by then a revised assessment order had been passed by the sole respondent on 12.03.2019 and a revised assessment order was made under Section 27 of the TNVAT Act, bearing reference TIN:33210420083 (hereinafter referred to as 'impugned order' for the sake brevity, clarity and convenience). Assailing the impugned order, instant writ petition has been filed.

6. Notwithstanding very many averments that have been made in the affidavit filed in support of the writ petition, several contentions canvassed and grounds canvassed in the writ petition, learned counsel for the writ petitioner abridged her submissions and restricted it to one pivotal ground and that

lone pivotal ground is, sufficient time was not given to the writ petition for personal hearing on 11.03.2019 owing to notice dated 05.03.2019 being received by the writ petitioner on 09.03.2019.

7. This Court has carefully considered the dynamics and dimensions of this matter. A careful consideration of the matter brings to light that the respondent in his wisdom has thought it fit to give a personal hearing to the writ petitioner. If the Assessing Officer decides to hold a personal hearing, it follows as a sequitur that advance notice giving sufficient time should have been given to the writ petitioner dealer. A chronicle of the dates, with regard to personal hearing and the communications qua the same, which have been alluded to (supra), leaves this Court with the considered view that sufficient/reasonable time has not been granted to the writ petitioner for the personal hearing.

8. Therefore, this Court deems it appropriate to set aside the impugned order and afford an opportunity of personal hearing to the writ petitioner obviously without expressing any opinion or view on the merits of the matter.

9. In the light of the narrative thus far, the following order is passed:

a) Impugned order being order dated 12.03.2019 bearing reference in TIN:33210420083/2010-11, made by the respondent is set aside. Setting aside the impugned order is solely for the purpose/on the ground of insufficient notice for personal hearing, in other words, no opinion or view is expressed by this Court on the merits of the matter.

b) By consent of learned counsel on both sides, the personal hearing is now fixed on 19.08.2019 (Monday) at 12.00 noon in the office of the sole respondent.

c) If the Writ petitioner does not avail the personal hearing on the aforesaid date, time and venue, it is open to the respondent to pass revised assessment order afresh on available records and material without reference to this Court.

d) If the writ petitioner avails the personal hearing on the aforesaid date, time and venue, the sole respondent shall take into account all the objections that may be raised by the writ petitioner, the submissions made by the writ petitioner in the personal hearing and redo the revised assessment order, obviously under Section 27 of the TNVAT Act and pass a revised assessment order afresh.

e) Revised assessment order passed in the aforesaid manner shall be communicated to the writ petitioner under due acknowledgment, in accordance with applicable Rules in this regard vide Rules under the TNVAT Act.

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

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To
The Assistant Commissioner (ST),(FAC)
Periament Assessment Circle
Chennai-600006

+1 CC to Mr.B. Raveendran, Advocate sr 65748.
+1 CC to Spl. Govt. Pleader (T)sr 66047

W.P.No.10911 of 2019
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PPA(CO)
SP(13/09/2019)