IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.07.2019

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THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.12465 of 2019
and W.M.P.No.12741 of 2019

Tvl.P.Karuppasamy Gounder ... Petitioner

vs.

The Assistant Commissioner (ST),
Pollachi Rural Assessment Circle,
Pollachi, Coimbatore District.
... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN 33702281680/14-15 dated 13.03.2018 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondents : Ms.G.Dhanamadhri
Government Advocate

ORDER

Mr.S.Ramanathan, learned counsel on record for the writ petitioner is before this Court. Ms.G.Dhanamadhri, Government Advocate, who accepted notice on behalf of lone official respondent, is also before this Court.

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

3. Subject matter of the writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act No.32 of 2006)' (hereinafter referred as 'TNVAT Act' for brevity). From submissions made at the hearing today, it comes to light that

the entire matter turns on a very narrow compass. Notwithstanding several averments and grounds raised in the affidavit filed in support of the writ petition, learned counsel for writ petitioner restricted his submissions to one pivotal ground and that primordial point is, personal hearing which is statutorily imperative has not been granted to the writ petitioner.

4. Short facts shorn of elaboration, which is imperative for appreciating this order are to the effect that writ petitioner is a Contractor doing work for 'Public Works Department' (hereinafter referred to as 'PWD' for brevity). Writ petitioner has received payments from PWD and tax has been deducted at source (hereinafter referred as 'TDS' for brevity). However, the writ petitioner had not filed monthly returns under Section 21 of TNVAT Act read with Rule 7 of the Rules thereunder. On verification, it came to light that with regard to Assessment year 2014-15 monthly returns have not been filed, revisional notice was issued to the writ petitioner calling upon the writ petitioner Dealer to send objections. This notice is dated 11.12.2017. From a reading of the impugned order, it comes to light that the writ petitioner responded to this notice by way of a reply. The reply was considered and the impugned order came to be passed.

5. As alluded to supra, instant writ petition pertains to Assessment Year 2014-15. Before this Court proceeds further, it is necessary to record that this Court is informed that with regard to the same writ petitioner Dealer, with regard to other Assessment Years under similar circumstances, writ petitions were filed, but the prayers were not acceded to. Writ petitioner carried it by way of a intra Court appeal i.e., W.A.No.231 of 2019 and the Hon'ble Divison Bench of this Court disposed of the writ appeal, in and by order dated 29.01.2019, directing an opportunity of personal hearing to be afforded to the writ petitioner subject to payment of 15% of the tax component with a rider / caveat that in the event of writ petitioner not adhering to these conditions or not availing the opportunity of personal hearing, the impugned order will stand revived.

6. This Court now proceeds to pass the following order:

A) Impugned order dated 13.03.2018 being TIN 33702281680/14-15 shall be treated as show cause notice (hereinafter 'SCN' for brevity).

B) writ petitioner shall pay 15% of the tax demanded vide the impugned order (now SCN). To be noted, it is 15% of the tax component alone (i.e., excluding the penalty). This shall be done within a fortnight from the date of receipt of a copy of this order.

C) Post payment of 15% of the tax component in the aforesaid manner, writ petitioner shall file reply to the SCN within another week therefrom along with all documents.

D) the respondent shall grant personal hearing after payment of 15% of tax component in the aforesaid manner within the aforementioned time frame.

E) The respondent shall communicate the date, time and venue of the personal hearing to writ petitioner under due acknowledgement.

F) writ petitioner shall avail of the personal hearing and produce further Books of Account, which may be necessary to buttress his objections.

G) If the writ petitioner does not avail of the personal hearing in the aforesaid manner, the impugned order which is now being treated as SCN will become final and will start operating. If the writ petitioner avails personal hearing, the respondent shall consider all the objections and the submissions made in the personal hearing and thereafter redo the assessment and pass a fresh Assessment order in accordance with law.

H) Fresh Assessment order so passed shall be communicated to the writ petitioner under due acknowledgement in accordance with the relevant rules in this regard under TNVAT Rules, 2007.

M.SUNDAR.J.,
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7. Accordingly, this writ petition is disposed of with the above directions. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST),
Pollachi Rural Assessment Circle,
Pollachi, Coimbatore District.

+1cc to Mr.S.Ramanathan, Advocate Sr.55142
+1cc to the Special Government Pleader Sr.55481

W.P.No.12465 of 2019

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srg 08/08/2019