IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-07-2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.12558, 12559, 12560, 12562, 12563 and 12565 of 2019
And
W.M.P.Nos.12818, 12820, 12821, 12822, 12823 and 12824 of 2019

M/s.Emkay Engineering Works,
Represented by its Proprietor R.Chinniah,
Shed No.379, SIDCO Industrial Estate,
Ambattur,
Chennai-600 098. .. Petitioner in all WPs

..Vs..

The Commercial Tax Officer,
Pattaravakkam Assessment Circle,
No.127, Yadaval Street,
Padi,
Chennai-600 050. .. Respondent in all WPs

Writ Petitions are filed under Article 226 of the Constitution of India praying to issue Writs of Certiorarified Mandamus, calling for the records of the respondent in TIN/ 33071363873/2010-11, TIN/33071363873/2011-12, TIN/ 33071363873/2012-13, TIN/33071363873/2013-14, TIN/ 33071363873/2014-15 and TIN/33071363873/2015-16 all respectively dated 25.6.2018, quash the same and further direct the respondent to take pass assessment orders in accordance with the provisions of the Tamil Nadu Value Added Tax Act, 2006 by taking into account the returns filed by the petitioner.

For Petitioner in all WPs: Mr.V.Sundareswaran

For Respondent in all WPs: Ms.G.Dhana Madhri,
Government Advocate.

C O M M O N O R D E R

This common order will govern these six writ petitions. In other words, this common order will dispose of these six writ petitions on hand.

2. Mr.V.Sundareswaran, learned counsel on behalf of writ petitioner in all these six writ petitions and Ms.Dhana Madhri, learned Government Advocate on behalf of sole respondent in all these six writ petitions are before this Court.

3. With consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

4. To be noted, at the time of admission on 26.4.2019, my learned predecessor Hon'ble Judge, had granted time for respondent to file counter-affidavit, however, today submissions have been made after obtaining instructions and therefore, main writ petitions have been taken up with consent of learned counsel on both sides.

5. In the light of the trajectory of the hearing today and in the light of nature of submissions made in the hearing today, the scope of these writ petitions have got considerably narrowed down and therefore, it may not be necessary to set out facts in great detail.

6. This Court is informed that instant six writ petitions on hand arise out of a common factual matrix. This Court is also informed that all these six writ petitions arise out of proceedings under 'The Tamil Nadu Value Added Tax Act, 2006' (hereinafter 'TNVAT Act' for brevity) and six revised assessment orders made under Section 22(4) of TNVAT Act have been called in question in these writ petitions.

7. To be noted, six revised assessment orders are for six consecutive assessment years from 2010-2011, 2011-2012, 2012- 2013, 2013-2014, 2014-2015 and 2015-2016 and all six revised assessment orders are dated 25.6.2018. Six revised assessment orders have been called in question in these six writ petitions and therefore the same shall hereinafter be collectively referred to as 'impugned orders' in plural and 'impugned order' in singular.

8. As already alluded to supra, this Court is informed that these six writ petitions arise out of a common factual matrix, the difference being assessment years for which respective impugned orders were passed. Obviously, the numerical values are also different. However, it is submitted that the central theme/core issue which arises for consideration in these six writ petitions is the same.

9. Notwithstanding several averments made, grounds/ contentions raised in the affidavits filed in support of these six writ petitions, in the hearing today, learned counsel for

writ petitioner, abridged and restricted his submission to one aspect of the matter. That lone pivotal and primordial submission which has been made by learned counsel for writ petitioner is that it has been mentioned in impugned orders (to be noted, mentioned in each impugned order) that revised assessment has been made under Section 22(4) of TNVAT Act. Section 22(4) of TNVAT Act as it exists in the Statute books reads as follows:

> '22. Deemed Assessment and procedure to be followed by the assessing authority.-
>
> (1) .. ..
>
> (2) .. ..
>
> (3) .. ..
>
> (4)If no return is submitted by the dealer for any period of the year or if the return filed is incomplete or incorrect, or if not accompanied with any of the documents prescribed or proof of payment of tax, the assessing authority shall, after making such enquiries as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed, after the completion of that year:
>
> Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.'

10. The pivotal submission of learned counsel for writ petitioner is that respondent before taking action for revised assessment under Section 22(4) of TNVAT Act, ought to have given 'a reasonable opportunity of being heard'. In other words, it is submitted that respondent ought to have given a personal hearing.

11. Learned Revenue Counsel points out that impugned orders were made on 25.6.2018 but writ petitions on hand have been filed in this Court only on 24.4.2019. In this regard, it is to be noted that it has been averred by learned Government Advocate that in the affidavit, it has been stated that orders were received by writ petitioner on 31.12.2018, but even that is incorrect and that impugned orders were received by writ petitioner only on 21.1.2019. To be noted, this has been recorded by my learned predecessor Hon'ble Judge in aforementioned proceedings dated 26.4.2019.

12. Learned Revenue Counsel also pointed out that writ petitioner has not chosen to send any objections to the revisional notice issued on 24.4.2017.

13. A perusal of revisional notice dated 24.4.2017, which has been placed before this Court as part of case-file, reveals that it calls for objections, not only does it call for objections, but it also makes it clear that writ petitioner dealer is given an opportunity of being heard in person to put forth his objections if any, within 15 days time within which objections if any had been called for. Though the respondent had called for objections from the writ petitioner, however, writ petitioner did not send objections.

14. In the considered view of this Court, in the aforesaid revisional notice, if the time and date of the personal hearing had been given, that would have been the end of the matter or end of campaign of the writ petitioner qua writ petitioner's challenge to impugned orders. As that has not happened, it has become necessary to peruse the nature of revision qua assessment that has been made. The nature of assessment that has been made owing to the peculiar facts and circumstances of these cases, brings into sharp focus the position that it would have been desirable to send one more communication to the writ petitioner fixing a personal hearing mentioning date, time and venue with specificity. To be noted, this view is taken owing to peculiar facts and circumstances of these cases as this Court normally does not interfere in cases where the dealer has not responded to the revisional notice.

15. It has already been alluded to supra, that other grounds/contentions raised by writ petitioner, including grounds touching upon JKM Graphics principle [M/s.JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, Vepery Assessment Circle, Chennai-6 reported in (2017) 99 VST 343(Mad)] are not being adverted to as writ petitioner's counsel has abridged and restricted his submissions to personal hearing under proviso to Section 22(4) of TNVAT Act.

16. Therefore, in the light of the peculiar facts and circumstances and also considering the proviso to Section 22(4) of TNVAT Act which makes personal hearing statutorily imperative, this Court comes to a conclusion that it would be appropriate to give an opportunity of personal hearing to the writ petitioner.

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

(a) All six impugned orders bearing Reference in TIN/33071363873/2010-11, TIN/33071363873/2011-12, TIN/33071363873/2012-13, TIN/33071363873/2013-14, TIN/33071363873/2014-15 and TIN/

33071363873/2015-16 all dated 25.6.2018 are set aside. To be noted, impugned orders are set aside solely for facilitating a personal hearing being granted to writ petitioner in accordance with proviso to Section 22(4) of TNVAT Act. In other words, it is also made clear that no opinion or view is expressed by this Court on the merits of the matter.

(b) The respondent shall afford an opportunity of personal hearing by communicating to writ petitioner in advance the date, time and venue, hold personal hearing, hear out all objections, redo the revision of assessment and pass revised assessment orders afresh as expeditiously as possible.

18. All these six writ petitions are disposed of with the aforesaid directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Svn

To

The Commercial Tax Officer,
Pattaravakkam Assessment Circle,
No.127, Yadaval Street,
Padi,
Chennai-600 050.

+1cc to Special Government Pleader(Taxes) sr.64270
+6cc to Mr.V.Sundareswaran, Advocate sr.64106

WPs 12558, 12559, 12560,
12562, 12563 and 12565 of 2019

ca(co)
nr 16/09/2019