IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 07.06.2019
Coram
THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.Nos.13687 and 13688 of 2019
and
W.M.P.Nos.13745 and 13747 of 2019

M/s.Skyking Agencies
Rep. By its Partner
No.91, D Block, First Main Raod
Chintamani Naidu Hall
Anna Nagar East
Chennai - 600 102. .. Petitioner in both W.Ps

vs.

Assistant Commissioner (ST)
Amaindakarai Assessment Circle
Chennai - 600 102. .. Respondent in both W.Ps

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to call for the records of the respondent and quash the assessment proceedings in TIN 33441024800/2013-14 and TIN 33441024800/2014-15 dated 30.03.2019 respectively and direct the respondent to pass fresh orders after providing an opportunity of personal hearing to the petitioner and pass such further or other order or orders as this Hon'ble High Court may deem fit and proper in the circumstances of this case and render justice.

For Petitioner : Mr.C.Baktha Siromoni
(In both W.Ps)

For Respondent : Mr.M.Hariharan
(In both W.Ps) Additional Government Pleader

COMMON ORDER

This common order will dispose of the instant two writ petitions. In other words, this common order will govern both these writ petitions i.e., W.P.Nos.13687 and 13688 of 2019.

2. The parties are the same in both the writ petitions. In other words, the sole writ petitioner and the lone respondent in both the writ petitions are one and the same. This Court is informed that facts are also common. Therefore, instant two

writ petitions are disposed of by this common order.

3. A perusal of the case file placed before this Court reveals that both these writ petitions are at the admission stage. Be that as it may, with the consent of both sides, the main writ petitions itself are taken up, heard out and disposed of.

4. Both the writ petitions pertain to assessment proceedings under ' Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity). While W.P.No.13687 of 2019 pertains to assessment year 2013-14, W.P.No.13688 of 2019 pertains to assessment year 2014-15.

5. In other respects, this Court is informed that the facts are common with the exception of numbers and values.

6. The petitioner are retailers of Public Address Systems and authorised dealers for certain brand of Public Address Systems. The petitioner assessee has filed monthly returns under TNVAT Act and the turnover declared by the petitioner assessee in the returns has been assessed under Section 22(2) of TNVAT Act. Thereafter, there was a surprise inspection conducted by the Enforcement Wing Officers in the premises of petitioner assessee inter alia under Section 65 of TNVAT Act on 28.12.2016, pertaining to several assessment years i.e., 2010-11 to 2015-16. To be noted, this includes the two assessment years which form subject matter of the instant two writ petitions.

7. The Enforcement Wing Officers, post assessment, sent proposals to the respondent and the respondent issued notice to petitioner assessee with regard to, what according to respondent is writ petitioner's liability under TNVAT Act. These liabilities are broadly under various heads. To be noted, reversal of 'Input Tax Credit' (' ITC for brevity) was one of the major heads.

8. It is not in dispute that the writ petitioner was served with a notice from the respondent calling for objections, but the writ petitioner only sought time without filing objections. In the personal hearing granted also, this Court is informed that the writ petitioner has only sought time. This trajectory before the respondent is articulated in one paragraph in the impugned order and the same reads as follows:

> 'To a notice issued to the dealers to file objections, if any, to the above proposals. The dealers have received the notice. The dealers in their letter dated 05.12.2017 have requested time for 30 days to file objections. Time was granted upto 10.01.2018. But they have not filed objections for past one year. Further personal

> hearing notice was also issued to the dealer in this office dated 25.02.2019. The dealers have received the notice on 25.02.2019. The dealer in their letter dated 06.03.2019 have stated that their Auditor not available on 07.03.2019, and request to give time on 18.03.2019. Time was also given. Then the dealer present on 19.03.2019 and orally requested additional time upto 28.03.2019. But they have not filed any objections till date. They have only requested time for past one and half years. They have not able to file objections. Hence the proposals is confirmed.

9. There is no disputation qua the above said trajectory before the respondent.

10. Therefore, the undisputed scenario is that the writ petitioner has not filed objections.

11. Under the aforesaid circumstances, the writ petitioner made a fervent plea that writ petitioner may now be permitted to submit objections with supporting documents and some conditions may be imposed owing to delay in filing objections.

12. Revenue Counsel, submitted that the respondent will be able to make an independent assessment i.e., independent of the proposal given by the Enforcement Wing Officers, only when there are objections.

13. To be noted, the obtaining legal position that the respondent has to make an independent assessment independent of the proposal given by the Enforcement Wing Officers is not in dispute. This rationale/ratio has been laid down by Hon'ble Single Judge of this Court in Narasus Roller Flour Mills Vs. Commercial Tax Officer (Enforcement Wing), Sankagiri reported in (2015) 81 VST 560 (MAD). It is not in dispute before this Court that there is no appeal against Narasus Roller Flour Mill's case and that the same is holding the field. Notwithstanding this position, learned counsel for Revenue pointed out that in Narasus Roller Flour Mill's case the petitioner assessee had filed objections, whereas in the instant case, the writ petitioner has not done so and has only been seeking time to file objections. To be noted, such a plea has been made even in the personal hearing that was afforded.

14. This takes us back to the fervent plea made by the writ petitioner that some time may be granted to the writ petitioner to file objections with supporting documents now.

15. Considering the peculiar facts and circumstances of the case and considering the undisputed legal position that the assessment in such cases have to necessarily be independent of proposal given by the Enforcement Wing Officers coupled with the fervent plea made by the writ petitioner that they will file objections together with documents now, this Court passes the following order:

a) impugned assessment orders dated 30.03.2019 bearing reference Nos.TIN/ 33441024800/2013-14 and TIN/33441024800/2014-15 are set aside.

b) petitioner shall file objections together with all supporting documents within a period of four (4) weeks from the date of receipt of a copy of this order along with payment of 15% of disputed tax. Though obvious it is made clear that this is 15% of the disputed tax only and excluding penalty.

c) if the writ petitioner does not file objections and also make payment of 15% of the disputed tax within the aforesaid period of four (4) weeks, the impugned order will stand revived without reference to this Court.

d) if the writ petitioner files objections and also deposits 15% of the disputed tax within the aforesaid time frame, respondent shall adjudicate the matter afresh and pass orders in accordance with law after considering all the objections that have been raised by the writ petitioner.

f) the aforesaid exercise of adjudication and passing orders afresh shall be done after giving opportunity of personal hearing to the writ petitioner and the entire exercise shall be completed within four (4) weeks from the date of filing of objections and payment of 15% disputed tax whichever is later, if the two are not simultaneous.

16. Both these writ petitions are disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

Assistant Commissioner (ST)
Amaindakarai Assessment Circle
Chennai - 600 102.

+1cc to Special Government Pleader(Taxes) sr.46541

W.P.Nos.13687 and 13688 of 2019
and W.M.P.Nos.13745 and 13747 of 2019

ln(co)
nr 17/07/2019