IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.07.2019
CORAM

THE HON'BLE MR. JUSTICE M. SUNDAR

W.P.Nos.14197, 14198 & 14203 of 2019
and
W.M.P.Nos.14248, 14253, 14257 of 2019

V.L.S.Fibre
Rep.by its Partner Mr.V.Subramaniam,
No.16, 3rd Cross Street,
Sriram Nagar, Pauthipattu(Village),
Kamaraj Nagar(Post)
Avadi, Chennai - 600 071. ..Petitioner in all W.Ps

vs

The Assistant Commissioner(ST),
Avadi Assessment Circle,
No.26, Vivekananda Street,
Gandhi Nagar,
Avadi, Chennai - 54. ..Respondent in all W.Ps

Prayer in W.P.No.14197 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned assessment order dated 31.01.2019 bearing reference No.TIN/ 33071301793/2012-13 and quash the same and further direct the Respondent to pass a fresh order of assessment for the Assessment Year TNVAT 2012-13 after providing an opportunity of personal hearing to the Petitioner.

Prayer in W.P.No.14198 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent's impugned letter dated 29.04.2019 bearing reference No.TIN/33071301793/2019/A3 together with impugned Notice in Form U dated 29.04.2019 and quash the same.

Prayer in W.P.No.14203 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent's impugned letter dated 31.01.2019 bearing reference No.TIN/33071301793/2013-14 and quash the same and further direct the Respondent to pass a fresh order of assessment for the Assessment Year TNVAT/2013-14 after providing an opportunity of personal hearing to the Petitioner.

For Petitioner : Mr.T.Mohan
for Mr.Christopher Manoharan
(in all W.Ps)

For Respondent : Ms.G.Dhanamadhri
Government Advocate (Taxes)
(in all W.Ps)

C O M M O N O R D E R

This common order will dispose of these three writ petitions.

2. Mr.T.Mohan, learned counsel representing the counsel on record for writ petitioner in these three writ petitions is before this Court. Ms.G.Dhanamadhri, Government Advocate on behalf of lone official respondent in all these three writ petitions is also before this Court.

3. With the consent of learned counsel on both sides, main writ petitions are taken up and are being disposed of. Therefore this common order will govern these three writ petitions.

4. This Court is informed without any disputation that these three writ petitions arise out of a common set of facts and that subject matter arises under Tamil Nadu Value Added Tax Act 2006 (Tamil Nadu Act No.32 of 2006)' hereinafter 'TNVAT ACT' for brevity. This Court is also informed that these three writ petitions pertain to two Assessment Years, namely 2012-2013 and 2013-2014. While W.P.No.14197 of 2019 pertains to Assessment Year 2012-2013 and W.P.No.14203 of 2019 pertains to Assessment Year 2013-2014, the consequential Bank Attachment Order is challenged in W.P.No.14198 of 2019.

5. Without any disputation, both the learned counsel submitted that these three writ petitions are covered by an earlier order dated 10.06.2019 made in W.P.Nos.14955, 14957 & 14958 of 2019.

6. For the sake of convenience and clarity, entire aforementioned earlier order dated 10.06.2019 is extracted and reproduced as follows:

> This common order will govern aforementioned three writ petitions. In other words, this common order will dispose of these three writ petitions on hand.
>
> 2. Mr.T.Mohan, learned counsel appearing on behalf of the counsel on record for the sole writ petitioner and Mr.M.Hariharan, learned Additional Government Pleader(AGP) on behalf of the sole respondent are before this Court.

3. This matter is listed under the caption 'ADJOURNED ADMISSION', but with the consent of learned counsel on both sides, main writ petitions are taken up, heard out and disposed of.

4. The core issue or in other words, the crux and gravamen of the bone of contention in all these three writ petitions is the same. This is not in dispute. In other words, there is no disputation or disagreement on this aspect of the matter.

5. Therefore, it will suffice to give a broad overview of bare minimum facts that are imperative for disposal of these three writ petitions.

6. In this backdrop, suffice to say that these writ petitions pertain to assessment orders passed by the respondent. While, 1st writ petition i.e., W.P.No.14955 of 2019 pertains to Central Sales Tax, the 2nd and 3rd writ petitions namely W.P.No.14957 of 2019 and W.P.No.14958 of 2019 pertain to the 'Tamil Nadu Value Added Tax' ['TNVAT'] governed by the 'Tamil Nadu Value Added Tax Act, 2006' ['TNVAT Act' for the sake of brevity].

7. With regard to the first writ petition alone, this is a second round of litigation as the writ petitioner approached this Hon'ble Court earlier against Assessment order dated 07.03.2016 and that writ petition was disposed of by this Court vide order dated 21.09.2016. To be noted, this Court is informed that earlier round of writ petition is writ petition in W.P.No.32556 of 2016 and while disposing of the writ petition, this Court, directed the petitioner inter alia to submit records, Books of Accounts, etc., to the Assessing officer.

8. This Court is also informed that in the other two writ petitions, there is no earlier round of litigations.

9. As mentioned supra, the core issue i.e., crux and gravamen is common in these three writ petitions. The core issue is that the writ petitioner sought time to file requisite records namely Books of Accounts and other related documents, in the personal hearing, but the impugned Assessment orders have been passed without granting time and by recording that the writ petitioners have not produced documents inspite of opportunity being given.

10. In this regard, learned counsel for writ petitioner drew the attention of this Court to an order passed by a Hon'ble Division Bench of this Court

being an order dated 29.01.2018 in W.A.No.173/2018. In this order of Hon'ble Division Bench, a Circular issued by the Principal Secretary / Commissioner of Commercial Taxes being Circular No.7/2014 dated 03.02.2014 has been extracted.

11. Specific attention of this Court is drawn to paragraph 3 (a) (I) of the Circular, which read as follows:

> '3. In the light of the above, the following circular instructions are issued which must be scrupulously followed by assessing officers while passing assessment orders. Joint Commissioner / Deputy Commissioners should verify at random the assessment orders passed by the Assessing Officer while taking up cursory inspection and ensure compliance with these basic procedures while passing orders.
>
> a) Passing of orders:-
>
> Fifteen days time shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process.
>
> I) After issue of notice calling for the objections, if any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may be only if, there exists a genuine reason.'

12. Hon'ble Division has held that the aforesaid Circular dated 03.02.2014 emphasizes that principles of natural justice should be adhered to. This is contained in Paragraph 14 of the order of this Court in W.A.No.173/2018 dated 29.01.2018 and it is extracted / reproduced hereunder:

> '14. Besides other directions, circular dated 03.02.2014, emphasises that principles of natural justice should be adhered to. In the case on hand, one of the challenges made to the assessment order is that when opportunity of hearing was sought, it was denied.'

13. Adverting to the aforesaid order, it was submitted by learned counsel for writ petitioner that whenever time is sought, it should be examined and a reply should be given to the dealer regarding granting of time or not granting as the case may be. However, the aforesaid para 3 (a) (I) of aforementioned circular refers to cases, where time is requested by the dealer within a period of 15 days. Therefore, the question as to whether the

aforesaid circular would apply to cases of this nature is left open as in the instant case, even without reference to the circular, there is no dispute that the writ petitioner dealer i.e., the writ petitioner assessee has sought time to produce documents in writing. Therefore, no prejudice would be caused, if an opportunity is given to the writ petitioner. This Court is informed by the writ petitioner counsel that documents have already been furnished and if a date is fixed for personal hearing, they will go before the respondents.

14. On instructions, it is submitted by the Revenue counsel that it would be desirable to have the date 02.07.2019 as the date fixed for this purpose.

15. Therefore, in the light of the narrative thus far, this Court passes the following order:

a) Impugned orders in each of these three writ petitions being reference Nos.CST/841662/2013-14, TIN/33071301793/2014-15, TIN/33071301793/2015-16 dated 29.03.2019 are set aside.

b) Personal hearing in each of these three cases shall be held on 02.07.2019 (Tuesday) at 12.00 noon by the respondent in his office.

c) In the personal hearing, the documents already submitted by the writ petitioner shall be examined and a personal hearing shall be held.

d) Post personal hearing, the respondent shall pass Assessment orders afresh within a period of three weeks from 02.07.2019 i.e., on or before 23.07.2019. Learned counsel for writ petitioner, on instructions, submits that, on 02.07.2019 in the personal hearing, an authorized representative or an Advocate will appear before the respondent Assessment officer and make submissions without seeking any further time.

e) Respondent shall communicate the Assessment order passed afresh under due acknowledgment to the writ petitioner within seven (7) working day from the date of the order.

16. All three writ petitions are disposed of with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

7. Therefore, the following order is passed in these three writ petitions:

(a) Impugned orders in each of these three writ petitions being reference Nos.TIN/33071301793/2012-13, dated 31.01.2019 TIN/33071301793/2019/A3, dated 29.04.2019 and TIN/33071301793/2013-14 dated 31.01.2019, are set aside.

b) Personal hearing in each of these three cases shall be tagged with the matters covered in the earlier order dated 10.06.2019 in W.P.Nos.14955, 14957 & 14958 of 2019, on 02.07.2019 (Tuesday) at 12.00 noon by the respondent in his office .

c) To be noted, the rate of taxation itself is under challenge vide W.P.No.16792 of 2019, which is on Board today, but learned Revenue counsel seeks adjournment in W.P.No.16792 of 2019. The personal hearing tomorrow (02.07.2019) will depend heavily upon outcome of W.P.No.16792 of 2019. To put it differently, verdict in W.P.No.16792 of 2019 will impact the personal hearing tomorrow (02.07.2019, Tuesday) in these matters i.e, matters covered by instant order as well as the matters covered by earlier order dated 10.06.2019 in W.P.Nos.14955, 14957 & 14958 of 2019.

d) Therefore the respondent shall reschedule/adjourn the personal hearing tomorrow i.e., 02.07.2019 and await verdict in W.P.No.16792 of 2019 before conducting personal hearing and dispose of these matters.

e) In the adjourned / rescheduled personal hearing, the documents already submitted by the writ petitioner shall be examined and a personal hearing shall be held.

f) Post personal hearing, the respondent shall pass Assessment orders afresh within a period of three weeks from the date of personal hearing. Learned counsel for writ petitioner, on instructions, submits that, in the personal hearing, an authorized representative or an Advocate will appear before the respondent Assessment officer and make submissions without seeking any further time. To be noted, in the earlier order dated 10.06.2019 made in W.P.Nos.14955, 14957 and 14958 of 2019, there was a direction to pass assessment orders afresh within three weeks from 02.07.2019 i.e., on or before 23.07.2019. This order shall be read in conjunction with earlier order and therefore, the time frame will now stand altered. The respondent shall pass assessment orders afresh within three weeks from the date of rescheduled/adjourned personal hearing which in any event will be after the verdict in W.P.No.16792 of 2019.

g) Respondent shall communicate the Assessment order passed afresh under due acknowledgment to the writ petitioner within seven (7) working day from the date of the order.

10. All three writ petitions are disposed of with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner(ST),
Avadi Assessment Circle,
No.26, Vivekananda Street,
Gandhi Nagar,
Avadi, Chennai - 54.

+3ccs to Mr. R.Anish Kumar, Advocate SR.No. 54340 to 54342

W.P.Nos.14197, 14198 & 14203 of 2019

A.SK(01/07/2019)