IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.14492 of 2019
and W.M.P.No.14505 of 2019

M/s.Ti Anode Fabricators Private Limited
Represented by Velappan Jayakumar
Managing Director
No.48, Noothencherry
Madambakkam
Chennai - 600 126. .. Petitioner

Vs.

State Tax Officer
Chengalpattu Assessment Circle
No.16A, I Floor, 1st Main Road
Anna Nagar, Chengalpattu
Tamil Nadu - 603 001. .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the order of the respondent in CST/797775/2012-13 dated 21.03.2019 and quash the same and direct the respondent to remand back to assessing officer to reassess and issue order for the year 2012-13 and other order (or) orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.R.Kalyan Kishen Singh
For Respondent : Ms.G.Dhanamadhri
Government Advocate.

O R D E R

Mr.R.Kalyan Kishen Singh, learned counsel on record for sole writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate who accepted notice on behalf of sole respondent are before this Court.

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

3. The entire writ petition turns on a very narrow compass. Writ petition arises out of proceedings under 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity).

4. Writ petitioner, which is a private limited company, is a dealer inter alia in Titanium products, writ petitioner was filing monthly returns under TNVAT Act and the same were being assessed (deemed assessment) under Section 22 (2) of TNVAT Act.

5. This Court is informed that the respondent has issued a demand notice for the Assessment Year 2012-13. In response to the demand notice, writ petitioner has given copies of C Forms and requested the respondent to do reassessment as the documents were misplaced in the Department. However, respondent without considering writ petitioner's request and without giving an opportunity of personal hearing, issued a Revised Assessment Order dated 21.03.2019. This 'Revised Assessment Order dated 21.03.2019' shall hereinafter be referred to as 'impugned order' for the sake of convenience and clarity.

6. A perusal of the impugned order reveals that respondent has not given personal hearing to the writ petitioner.

7. This order is being passed with the hope that such a situation and predicament does not occur in days to come. Be that as it may, a perusal of the impugned order also reveals that the writ petitioner has an appeal remedy by way of appeal before the Appellate Deputy Commissioner (ST) (South), Greams Road, Chennai - 06. In other words, the writ petitioner has an alternate remedy of a statutory appeal. Therefore, before exercising writ jurisdiction and interfering with the impugned order, it may be necessary to make a short observation about alternate remedy qua exercise of jurisdiction under Article 226 of Constitution of India. There are a long line of authorities in this regard.

8. What can be deduced from the long line of authorities of Hon'ble Supreme Court is that alternate remedy is essentially not an absolute rule. It is a rule of discretion and it is not a rule of compulsion.

9. Exceptions to the rule of Alternate remedy have also been laid down. Violation of 'principles of natural justice' ('NJP' for brevity) is one of the exceptions.

10. From the narrative thus far, it emerges clearly that in the instant case, there has been violation of NJP.

11. Learned Revenue Counsel on verification of records submits that it is a matter of fact that no opportunity of personal hearing has been given to the writ petitioner.

Therefore, it follows as an inevitable and indisputable sequitur that there is a clear violation of NJP principles.

12. Therefore, there is no difficulty in exercising writ jurisdiction and interfering with the impugned order notwithstanding alternate remedy in the instant case.

13. In the light of narrative supra and in the light of the trajectory which the hearing has taken today, this Court passes the following order:

(a) Impugned Order dated 21.03.2019 bearing reference CST:797775/2012-13 made by the sole respondent is hereby set aside.

(b) respondent is directed to make assessment afresh, keeping in mind the principles laid down by this Court in Narasus Roller Flour Mills case [Narasus Roller Flour Mills Vs. Commercial Tax Officer (Enforcement Wing), Sankagiri and Another reported in [2015] 81 VST 560 (Mad)]. To be noted, Narasus principle is to the effect that proposal given by the audit team of the Enforcement Wing should not be the sole basis for the order. There should be an adjudication, independent proposal/order made by the Enforcement Wing.

(c) Though obvious, it is made clear that while embarking upon the exercise of adjudication afresh, the respondent shall give an opportunity of personal hearing to the writ petitioner i.e., duly authorised representative of the writ petitioner, as writ petitioner is a company (juristic person) and also permit the representative of the writ petitioner company to file documents in support of the submissions and objections which may be raised.

(d) The aforesaid exercise of assessment afresh shall be concluded and orders shall be passed within a period of four weeks from the date of receipt of a copy of this order.

With the above directions, the instant writ petition is disposed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vsm
To

The State Tax Officer
Chengalpattu Assessment Circle
No.16A, I Floor, 1st Main Road
Anna Nagar, Chengalpattu
Tamil Nadu – 603 001.

+1 CC to Mr.Kalyan Kishen, Advocate sr 51071.

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MG(CO)
SP(15/07/2019)