IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.14679, 14684 and 14686 of 2019

&

W.M.P.Nos.14677, 14678 & 14680 of 2019

Tvl.SSM Processing Mills Ltd.,
No.75 A Edappadi Road, Kumarapalayam .. Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST)
Sankari .. Respondent in all W.Ps.

Writ Petition are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the petitioner on the files of the respondent herein in TNGST:3223283/2002-2003, TNGST:3223283/2003-2004 and TNGST:3223283/2004-2005 and quash the impugned proceedings dated 29.03.2019 by holding that the same as ex-facie illegal and contrary to the principles of natural justice and scope of TNVAT Act 2006, Circular No.7/2014 BBI/3589/2014 dated 3/2/2014 issued by the Principal Secretary/Commissioner of Commercial Taxes.

For Petitioner : Mr.Adithya Reddy

For Respondents: Mr.M.Hariharan
Additional Government Pleader

O R D E R

This common order will govern these three writ petitions.

2. Mr.Adithya Reddy, learned counsel on record for writ petitioner in all these three writ petitions and Mr.M.Hariharan, learned Additional Government Pleader on behalf of sole respondent in all these three writ petitions are before this Court.

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

4.Short facts shorn of elaborations or in other words short factual matrix, which is imperative for appreciating this order, is as follows:

a) These writ petitions pertain to a period before the 'Value Added Tax' (VAT) regime started operating. In other words, these writ petitions pertain to a period prior to the coming into force of 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity).

b) Three different orders made by the respondent inter alia under Section 12 of 'Tamil Nadu General Sales Tax Act, 1956' ('TNGST Act' for brevity) being original assessment orders for three different assessment years i.e., 2002-03, 2003-04 and 2004-05 have been called in question in each of these writ petitions.

c) It is the case of the writ petitioner that when they were visited with a notice calling for objections, they gave their preliminary objections and also sought for a personal hearing.

d) Though personal hearing was fixed, the notice regarding personal hearing was sent to the writ petitioner by mail and the writ petitioner received it on a day wherein and whereby the writ petitioner had only one working day between the date of receipt of the notice and the personal hearing.

e) Therefore, the writ petitioner immediately sent a communication to respondent pointing out that they have only one working day and the writ petitioner sought further time. This is vide writ petitioner's letter dated 22.09.2018.

f) The respondent did not respond, but went ahead and passed the impugned orders saying that the writ petitioner had requested adjournment of personal hearing by one month, but have done nothing for six months.

g) Instant writ petitions have been filed assailing the aforesaid three original assessment orders made by the respondent inter alia under Section 12 of TNGST Act being original Assessment orders (hereinafter 'impugned orders' for brevity).



5. Though several grounds have been raised in the affidavits filed in support of the writ petitions, learned counsel for writ petitioner, at the hearing, restricted his ground of attack qua impugned orders to one pivotal ground. That one pivotal ground is that 'natural justice principles' (NJP) have been violated as personal hearing did not take place in the circumstances, which have been set out supra, in the narration of factual matrix and which have also been alluded to infra elsewhere in this order.

6.Elaborating further on this, taking this Court through the typed-set of papers, learned counsel for writ petitioner submitted that on receipt of notice inviting objections, from the respondent being notice dated 18.04.2018, the writ petitioner sent preliminary objections on 11.05.2018 and had made it clear that these are preliminary objections.

7. In response to the preliminary objections to the notice, respondent sent a communication dated 18.09.2018 fixing personal hearing on 25.09.2018 at 11.30am in his office. Respondent had also called upon the writ petitioner to file final objections along with connected records. This communication dated 18.09.2018 from the respondent was received by the writ petitioner on 22.09.2018, which is a Saturday. On that very day i.e., 22.09.2018, writ petitioner sent a communication to the respondent pointing out that personal hearing has been fixed on 25.09.2018 at 11.30am and the time is too short as there is only one working day between the date of receipt of notice and the personal hearing. To be noted, that one working day is 24.09.2018 (Monday). There is no disputation or disagreement before this Court that this communication dated 22.09.2018 from writ petitioner was received by the respondent and the respondent did not send any response. To be noted, in this 22.09.2019 communication, writ petitioner had sought for adjournment by a month.

8. It is the specific case of the writ petitioner that the respondent should have sent a response rescheduling/refixing the personal hearing. In this regard writ petitioner pressed into service a circular issued by the Principal Secretary/Commissioner of Commercial Taxes being Circular No.7/2014 bearing reference BB1/3589/2014. Most relevant portion of this circular is contained in Paragraph 3 (a)(i), which reads 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 Commissioners/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 limit 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 exits a genuine reason.'

(Underlining made by this Court to high light and to supply emphasis.)

9. Adverting to Paragraph 3(a)(i) supra, learned counsel submitted that it was imperative that the respondent should have sent a reply to the aforesaid 22.09.2018 communication from the writ petitioner in accordance with paragraph 3(a)(i).

10. There is no disputation or disagreement before this Court that respondent has not sent a reply to the 22.09.2018 communication.

11. Faced with the above situation, learned State counsel i.e., Revenue counsel submitted that even after sending the communication dated 22.09.2018 seeking adjournment by a month pointing out that there is only one working day between the date of receipt of notice and the personal hearing, there has been a lull on the part of the writ petitioner for nearly six months.

12. In the light of paragraph 3(a)(i) of the aforesaid circular, which is admittedly binding on the respondent, this Court is unable to accept this submission as it is imperative that the respondent should have responded to the request for adjournment, which was made well within the 15 days stipulated in Paragraph 3(a)(i) of the circular. Therefore, the inevitable sequitur that follows is that there was no personal hearing, there is violation of NJP. To be noted, in this case the respondent considering the nature of the matter thought it fit to give a personal hearing and therefore the question as to whether personal hearing is imperative is left open.

13. In the light of narrative supra, this Court passes the following order:

a) Impugned orders in all three writ petitions being orders dated 29.03.2018 bearing reference TNGST:3223283/2002-2003, TNGST:3223283/2003-2004 and TNGST:3223283/2004-2005 are set aside. To be noted, impugned orders are set aside solely on the ground of violation of NJP i.e., personal hearing, which is a prescribed procedure, not being given. In other words, impugned orders are set aside without expressing any opinion whatsoever on merits of the matter.

b) With the consent of both sides, personal hearing is now fixed on 15.07.2019 at 11.30am in the office of the respondent.

c) In the personal hearing on the aforesaid date, time and venue, writ petitioner shall file final objections along with all supporting documents.

d) After personal hearing on 15.07.2019, the respondent shall redo the assessment and pass Assessment Orders afresh within a period of six weeks from the date of personal hearing i.e., on or before 26.08.2019.

e) The fresh Assessment Orders, after redoing the assessment, shall be communicated to the writ petitioner under due acknowledgement in accordance with the rules in this regard.

These three writ petitions are disposed of with the aforesaid directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner (ST)
Sankari

+1cc to Special Government Pleader sr.51322

W.P.Nos.14679, 14684 and 14686 of 2019 &
W.M.P.Nos.14677, 14678 & 14680 of 2019

kk(co)
nr 26/07/2019