IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.Nos.14660, 14662 and 14663 of 2019
and
W.M.P.Nos.13745 and 13747 of 2019

Tvl.Ezeekart Retail
Represented by its Proprietor
No.6/2, Balaji Avenue, Second Street
T.Nagar, Chennai - 600 017. .. Petitioner in all W.Ps'

vs.

1.The State of Tamil Nadu
Rep. By its Secretary to Government
Department of Sales Tax & Registration
Fort St. George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai - 600 005.

3.The State Tax Officer
3rd Floor, Pondy Bazar Assessment Circle
No.46, Greenways Road,
Chennai - 600 009. .. Respondents in all W.Ps'

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records in respect of the proceedings TIN Nos.33631523518/2012-13, 33631523518/2013-14 and 33631523518/2014-15 respectively dated 28.02.2019 received by the petitioner on 06.04.2019 of the 3rd respondent under the Tamil Nadu Value Added Tax Act, 2006 quash the same and to direct the 3rd respondent to pass fresh orders after affording opportunity of personal hearing for the assessment years 2012-13, 2013-14 and 2014-15 respectively 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 thus render justice.

For Petitioner (In all W.Ps')	:	Mr.M.Md.Ibrahim Ali
For Respondents (In all W.Ps')	:	Mr.M.Hariharan Additional Government Pleader

COMMON ORDER

This common order will govern the aforesaid three writ petitions. In other words, this common order will dispose of these three writ petitions.

2. Mr.M.MD.Ibrahim Ali, learned counsel on record for the petitioner in all the three writ petitions and Mr.M.Hariharan, learned Additional Government Pleader on behalf of all the three respondents in all the three writ petitions are before this Court.

3. Though this writ petition is at the admission stage and the Revenue Counsel has accepted notice at the admission stage in the previous hearing on 22.05.2019, with the consent of learned counsel on both sides, main writ petitions itself are taken up, heard out and disposed of.

4. The petitioner is one Mr.Anil Kumar, a sole Proprietor carrying on business in the name and style 'Ezeekart Retail'. It can be culled out from the affidavit filed in support of the writ petitions that the writ petitioner is a dealer in Mobile phones, Mobile Phone accessories and other electronics product.

5. To be noted, the assessment was for all practical purposes in the nature of self assessment/deemed assessment inter alia under Section 22(2) of 'Tamil Nadu Value Added Tax Act' ('TNVAT Act' for brevity). When things stood as above, the Enforcement Wing Officers inspected the business premises of the writ petitioner on 12.12.2014 and found certain discrepancies at the time of inspection.

6. Considering the narrow compass on which these writ petitions turn, more so, owing to the trajectory of the hearing today, it may not be necessary to advert to the discrepancies by giving elaborate details and particulars.

7. Suffice to say that pursuant to the inspection of the Enforcement Wing Officers on 12.12.2014, third respondent, issued a notice captioned 'Revision Notice', setting out the discrepancies noticed by the Enforcement Wing Officers at the time of inspection and calling upon the writ petitioner to file objections if any. To be noted, in this notice, captioned

'Revision Notice', the revision proposal qua assessment inter alia under Section 27 of TNVAT Act as well as proposal to levy penalty was set out and objections were called for.

8. To the aforesaid Revision Notice and proposal, the writ petitioner sent objections and also sought for personal hearing to make submissions on the objections. This is not in dispute.

9. Though the writ petitioner had sent objections and though the writ petitioner had specifically sought for personal hearing, the Assessing Authority proceeded further, without personal hearing and the impugned assessment orders came to be passed. To be noted, there are three different assessment orders for the three different assessment years and each of those assessment orders have been assailed/impugned in each of these writ petitions.

10. A perusal of the impugned orders reveal that objections of the writ petitioner have not been considered and personal hearing has not been given.

11. Learned Revenue Counsel, who had accepted notice in the previous hearing i.e., on 22.05.2019 from the records, submitted that it is a matter of fact that no personal hearing was afforded and more importantly the objections of the writ petitioner have not been considered.

12. In the light of the aforesaid undisputed position, which has emerged in the hearing today, it follows as a natural sequitur that this is a case of violation of 'Natural Justice Principles' (NJP).

13. This takes us to the alternate remedy aspect of the matter.

14. It is also not in dispute that against the impugned orders in these writ petitions, an appeal lies to the Deputy Commissioner (CT), Chennai 600 006 within the time frame of 30 days. With regard to this alternate remedy, it is to be noted that in a long line of authorities, it has been held that writ jurisdiction will be exercised, notwithstanding alternate remedy, when there are certain specific exceptions and one such specific exception is violation of NJP. In this regard, it will suffice to refer to K.C.Mathew case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85] and Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110

15. In K.C.Mathew case rendered by the Hon'ble Supreme Court, the position that exercise of writ jurisdiction notwithstanding alternate remedy will be when a case falls

under specific exceptions has been laid down and reiterated. Broadly, lack of jurisdictions, violation of NJP and alternate remedy being ineffective or not efficacious are the exceptions. These exceptions are not exhaustive, but those are only broad heads necessary for disposal of the instant writ petition. This court has also noticed that alternate remedy is not absolute. In other words, it is not a rule of compulsion and it is a rule of discretion.

16. Therefore, in the light of undisputed position that there is violation of NJP, it may not be necessary to relegate the writ petitioner to the appeal remedy i.e., alternate remedy by way of an appeal to the Appellate Deputy Commissioner.

17. Therefore, this is a fit case to set aside the impugned orders and send the matter back to the third respondent for making assessment afresh in accordance with law.

18. More importantly, learned counsel for writ petitioner, placed before this Court a judgment made by a Hon'ble Division Bench of this Court dated 29.06.2017 in Balaji Super Market Vs. The State of Tamil Nadu. The Hon'ble Division Bench of this Court following SRC Projects Private Ltd., case, held that it is imperative that an Assessing Officer should grant personal hearing particularly when it is asked for. This is articulated in paragraph 11 and the same reads as follows:

> '11. The second mistake committed by the Assessing Officer is, not affording an opportunity of personal hearing. The Hon'ble Division Bench of this Court in the case of Tvl. SRC Projects Private Ltd. Vs. The Commissioner of Commercial Taxes reported in 33 VST 33, has held that when request is made for a personal hearing, the Assessing Officer is bound to afford such an opportunity. In the instant case, the Assessing Officer has admitted that the dealer has submitted his reply along with copies of purchase invoices but has ignored to note the specific request for personal hearing. This error would vitiate the impugned Assessment Order.'

19. As this Court is setting aside the impugned orders and sending it back to the Assessing Officer in the light of the facts and circumstances of this case, this Court deems it appropriate to mention that assessment afresh shall be in accordance with the principles laid down by this Court in cases of this nature more particularly in Narasus Roller Flour Mills Vs. Commercial Tax Officer (Enforcement Wing), Sankagiri reported in (2015) 81 VST 560 (MAD). In Narasus Roller Flour Mill's case, this Court had held that the Assessing Officer shall not go merely by the proposal given by the Enforcement Wing Officers, but shall make an assessment independent of the

proposal given by the Enforcement Wing Officers.

20. In the instant case, such a procedure shall be adopted keeping in mind the law laid down by this Court, besides giving an opportunity of personal hearing to the writ petitioner.

21. In the light of the narrative supra, the following order is passed:

a) impugned orders, in each of these three writ petitions, bearing Reference TIN Nos. 33631523518/2012-13, 33631523518/2013-14 and 33631523518/2014-15 all dated 28.02.2019 are set aside.

b) third respondent shall grant an opportunity of personal hearing to the writ petitioner by giving sufficient advance notice clearly specifying the date, time and venue. In the personal hearing, the writ petitioner shall be permitted to make submissions along with supporting documents.

c) Assessment afresh shall be made by third respondent in accordance with law particularly bearing in mind principles laid down by this Court in Narasus Roller Flour Mill's case.

d) Aforesaid exercise shall be completed by the third respondent within four weeks from the date of receipt of a copy of this order.

22. All the writ petitions are allowed and disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

vsm

To

1.The Secretary
State of Tamil Nadu
Department of Sales Tax & Registration
Fort St. George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai - 600 005.

3.The State Tax Officer
3rd Floor, Pondy Bazar Assessment Circle
No.46, Greenways Road,
Chennai - 600 009.

+3cc to Mr.M.Md.Ibrahim Ali, Advocate SR.No.45751

+1cc to Specaial Government Pleader (Taxes) SR.No.46542

W.P.Nos.14660, 14662 and 14663 of 2019
and W.M.P.Nos.14655, 14657 and 14658 of 2019

JJ(CO)
GMY(08/07/2019)