IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.NO.16748 OF 2019
and
WMP.Nos.16358 and 16359 of 2019

Tvl.Sri Samyuktha Traders
Rep. by its Proprietor
R.P.Sripathi .. Petitioner

- Vs-

State Tax Officer
Gingee
Villupuram District - 604 202.
..Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records in TIN No.33876281818/2015-16 dated 27.02.2017 and consequential order dated 29.04.2019 on the file of the respondent and quash the same as illegal and pass such further or other orders as this Court deems fit to the facts and circumstances of the case and thus render justice.

For Petitioner	:	Mr.N.Thiyagarajan, Senior Counsel for Mr.R.Dileepan
For Respondent (in both W.Ps.)	:	Mr.M.Hariharan Additional Government Pleader

O R D E R

Mr.N.Thiyagarajan, learned Senior instructed by Mr.R.Dileepan, learned counsel on record for writ petitioner is before this Court. Mr.M.Hariharan, learned Additional Government Pleader accepts notice on behalf of sole respondent.

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

3. Entire matter turns on a very narrow compass.

4. To put it in a nutshell, writ petitioner has admittedly, purchase cement and steel during the assessment year 2015-16. It is writ petitioner's case that there was no sale of such cement, steel and it was used only for writ petitioner's construction. At the hearing, learned Senior Counsel, on instructions, submitted that it was used for construction of writ petitioner's educational institution. However, difficulty for the writ petitioner arose because, writ petitioner had registered himself with respondent with TIN No.33876281818/2015-16.

5. It is not in dispute that writ petitioner did not file monthly returns and therefore, there was no deemed assessment under Section 22(2) of 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity), though writ petitioner had registered himself with respondent under TNVAT Act as mentioned supra.

6. Therefore, respondent initiated proceedings for making assessment on best judgment method inter alia under Section 22 (4) of TNVAT Act.

7. An opportunity of personal hearing was given, but the same was not availed by writ petitioner and respondent passed an order dated 27.02.2017, adopting the best judgment method under Section 22(4) of TNVAT Act. Under this order, tax liability was fixed as Rs.2,29,473/- and besides this penalty of Rs.3,44,210/- was also imposed.

8. Thereafter, writ petitioner on 30.03.2017 filed a revision seeking reassessment under Section 22(6) of TNVAT Act. Along with this revision, certain supporting material were annexed. In this revision, it was contended that writ petitioner had used the aforesaid goods only for construction of his own educational institution and in any event turnover is below Rs.50 lakhs.

9. According to writ petitioner, revision petition remained dormant and therefore, a reminder dated 11.04.2019 was sent.

10. Thereafter, respondent has passed the impugned order, rejecting the aforesaid revision made by the writ petitioner, inter alia under Section 22(6) of TNVAT Act.

11. Learned Senior Counsel for writ petitioner submitted that if an opportunity of personal hearing had been granted before rejecting the revision, writ petitioner would have been able to convince the authorities that there was no sale of the aforesaid goods or in other words that the goods were used only for construction of writ petitioner's educational institution and it is his further submission that writ petitioner would have been able to convince the respondent that the turnover is less

than Rs.50 lakhs.

12. Learned Revenue counsel pointed out that with regard to revision under Section 22(6) of TNVAT Act, there is no provision for personal hearing.

13. Leaving this question as to whether personal hearing is imperative for a revision under Section 22(6) of TNVAT Act open, considering the peculiar facts and circumstances of this case, this Court passes the following order:

a) impugned assessment order dated 27.02.2017 as well as the order passed in the revision being order dated 29.04.2019 are set aside. To be noted, these orders are set aside only for the purpose of facilitating the writ petitioner to get personal hearing. In other words, no opinion or views are expressed by this Court on merits.

b) By consent of both sides, personal hearing is fixed on 10.07.2019 at 12.00 noon. in the office of sole respondent.

c) writ petitioner shall pay 15% of the tax due i.e., 15% of Rs.2,29,473/- before the personal hearing. It can be tendered before the personal hearing. To be noted, it can be tendered on the date of personal hearing also, but before the personal hearing. Also to be noted, it is 15% of the tax due alone excluding the penalty.

d) If 15% of the tax due is not paid by writ petitioner before the personal hearing, there shall be no personal hearing and the impugned orders shall stand revived.

e) if writ petitioner pays 15% of the tax due and avails the personal hearing, respondent shall hear the revision made by writ petitioner afresh and pass orders afresh in accordance with law.

f) after personal hearing on 10.07.2019, orders afresh in the revision shall be passed within six weeks therefrom.

g) After passing orders afresh, the order so passed in the revision shall be communicated to the writ petitioner with due acknowledgement in a manner known to law within seven working days from the date of disposal of the revision.

Writ Petition is disposed of on above terms. No costs. Consequently, connected miscellaneous petition is closed.

vsm

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
The State Tax Officer
Gingee,
Villupuram District - 604 202.

+1cc to Mr.S.Ramesh Kumar, Advocate, SR.No.49916
+1cc to the Spl. Govt.Pleader, Vide Sr.No.50814

W.P.No.16748 of 2019
and
WMP.Nos.16358 and 16359 of 2019

Kak(30/07/2019)