IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 10.07.2019

CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.19130 of 2019
&
W.M.P.No.18499 of 2019

M/s.Tim India Exim
Represented by its Partner
No.675, 200 Feet Inner Ring Road
Madhavaram
Chennai-110 .. Petitioner

Vs.

Commercial Tax Officer
Madhavaram Assessment Circle
Chennai .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the respondent in order dated 26.04.2019 in TIN 33341088875/2013-14 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.V.Haribabu
Additional Government Pleader

O R D E R

Mr.Adithya Reddy , learned counsel on record for writ petitioner is before this Court. Mr.V.Haribabu, learned Additional Government Pleader accepts notice on behalf of lone official respondent.

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

3. Subject matter of this writ petition arises inter alia under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for brevity.

4.Writ petitioner is a dealer under TNVAT Act and a revised Assessment Order dated 26.04.2019 bearing reference TIN 33341088875/2013-14 came to be passed by the lone respondent.

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This revised Assessment Order, this Court is informed, is under Section 27 of TNVAT Act. This revised Assessment Order has been called in question in the instant writ petition and therefore, the same shall be referred to as 'impugned order' for the sake of brevity, convenience and clarity.

5.Notwithstanding various averments in the affidavit filed in support of the writ petition and the grounds raised therein, learned counsel confined his submissions to one pivotal ground and that pivotal ground is personal hearing was not granted to the writ petitioner dealer before the impugned order was passed.

6. In support of this personal hearing ground, learned counsel for writ petitioner advanced following arguments:

a) Original revisional notice was issued more than four years prior to the impugned order. To be precise, original revisional notice was issued on 27.02.2015. Writ petitioner sent a reply to this notice on 10.04.2015.

b) Thereafter there was a lull for more than 2 ½ years. After 2 ½ years, on 29.11.2017, there was a communication from the respondent calling upon the writ petitioner dealer to produce as many as 23 purchase bills. This notice makes it clear that these 23 purchase bills have to be produced within three days. It is the emphatic submission of learned counsel that all the 23 purchase bills were submitted to the respondents within three days. Thereafter, there was again a lull for more than 1 ½ years and the impugned order came to be passed, thereafter without giving an opportunity to explain the purchase bills.

7. A perusal of the impugned order reveals that the respondent has looked into the 23 purchase bills and that the original invoice numbers and dates do not tally with the invoice numbers and dates reported in the monthly returns is the finding returned in the impugned order. To be noted, monthly returns were obviously more than half a decade ago as instant impugned order pertains Assessment Year 2013-14. In the light of lapse of time and lull between the first revisional notice on 27.02.2015 and reply thereto on 10.04.2015 besides the lull after production of 23 purchase bills in 2017 itself pursuant to notice dated 29.11.2017, the Assessment Year itself being more than half a decade prior to impugned order, the writ petitioner contends that if a personal hearing had been held, writ petitioner would have been able to demonstrate with specificity and clarity about the 23 purchase bills and as to the issue of they tallying with the invoice numbers and dates reported in the monthly returns.

8. In this regard, learned counsel draws the attention of this Court to aforesaid reply sent by the petitioner dealer i.e., reply to the first revisional notice dated 27.02.2015. To be

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noted, this reply of the writ petitioner is dated 10.04.2015. In this reply, writ petitioner has sought for a personal hearing. This is articulated in the last paragraph of the reply, which reads as follows:

> ' In view of the above we request to kindly drop all the proposals in your above referred notice after granting us an opportunity of personal hearing'

9. Furthering his arguments in this direction, learned counsel pressed into service an order made by this Court on 07.06.2019 in W.P.No.14660 of 2019 etc., with regard to personal hearing aspect, which in turn was an order that was passed by drawing inspiration from SRC projects Private Limited case [Tvl.SRC Projects Private Ltd., Vs. The Commissioner of Commercial Taxes reported in 33 VST 33], a Division Bench judgment. There are two aspects to this matter. Order of this Court itself is based on the peculiar facts and circumstances of that case which comes out very clearly from a reading of that order. A case is an authority for the facts of that particular matter in which the decision is rendered. This Court deems it appropriate to refer to the celebrated Padma Sundara Rao case being Padma Sundara Rao Vs. State of Tamil Nadu case reported in (2002) 3 SCC 533 with regard to precedents and the most relevant paragraph is paragraph 9 and the same reads as follows :

> "9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

10. Be that as it may, in the aforesaid order, personal hearing was only one of the aspects of the matter and that was not the lone aspect as in this case. Likewise, SRC Projects principle also is an authority which has to be read in the context of facts and circumstances of that case.

11. However, in the instant case, as this Court is convinced that on the peculiar facts and circumstances of this case i.e., lull between the first revisional notice on 27.02.2015 and reply thereto on 10.04.2015 besides further lull after production of 23 purchase bills in 2017 itself pursuant to notice dated 29.11.2017 and comparison of 23 purchase bills 1 ½ years after they were produced, the prayer for personal hearing

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has to be acceded to. Further discussion on the aforesaid aspect of the matter is not necessary for disposal of the instant case. However such discussion is reserved for a matter where there is a contest in this regard.

12. In the light of the narrative thus far, the following order is passed:

a) Impugned order dated 26.04.2019 bearing reference TIN 33341088875/2013-14 is set aside. To be noted, impugned order is set aside solely on the ground of personal hearing. In other words, it is made clear that no view or opinion is expressed on merits of the matter.

b) By consent of both sides, personal hearing is fixed on 18.07.2019 at 12 Noon. Venue shall be the office of the sole respondent. Writ petitioner undertakes to avail the personal hearing on the aforesaid date, time and venue.

c) If the writ petitioner does not avail the personal hearing on the aforesaid date, time and venue, the impugned order will stand revived without reference to this Court and it will be open to the respondent to carry it to its logical end. On the contrary if the writ petitioner avails the personal hearing, the respondent shall consider all objections including the specific issue pertaining to 23 purchase orders as to whether the same tally with the dates and numbers of invoice made in the monthly returns filed half a decade ago, redo assessment and pass revised Assessment Order afresh this time within four weeks (without delay as in the earlier occasion) from the date of personal hearing.

d) Revised Assessment so redone shall be communicated to the writ petitioner under due acknowledgement in accordance with the Rules in this regard under TNVAT Act.

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This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Madhavaram Assessment Circle
Chennai

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.57850
+1cc to the Government Pleader, S.R.No.59389

W.P.No.19130 of 2019 &
W.M.P.No.18499 of 2019

RRS(16/07/2019)

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