IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 27.06.2019
Coram
THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.No.17678 of 2019
&
W.M.P.No.17116 of 2019

Tvl.Sri Ganesa Granites
Represented by its Proprietor
N.Balveersingh
No.2/642 Achamangalam Road
Nagamangalam
Near Sidco
Jagadevi Post
Krishnagiri - 635 104
.. Petitioner

vs.

The Sales Tax Officer
Krishnagiri Assessment Circle
Krishnagiri
.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the files of the respondent in CST No.945621/2011-12 dated 26.04.2019 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.V.Haribabu
Additional Government Pleader

O R D E R

Mr.R.Senniappan, 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, the main writ petition itself is taken up, heard out and is being disposed of.

3. Writ petitioner is a dealer with registration under 'Central Sales Tax Act, 1956' ('CST Act' for brevity) and ' Tamil Nadu Value Added Tax Act, 2006' (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred as 'TNVAT Act'.

4.An order dated 26.04.2019 for the Assessment Year 2011-12 has been passed (hereinafter 'impugned order' for brevity) by the respondent.

5.There is no disputation or disagreement that the impugned order has been passed by the respondent under Section 9(2) of CST Act and Section 22(4) of TNVAT Act.

6. The sole and short point canvassed by the learned counsel for writ petitioner is that opportunity of being heard i.e., personal hearing has not been given to the writ petitioner before passing the impugned order.

7.This takes us to the contents of the impugned order wherein it has been mentioned that a notice dated 18.03.2019 was sent to the writ petitioner and the writ petitioner did not respond.

8. With regard to this notice dated 18.03,2019, learned counsel for writ petitioner makes two submissions. One submission is that such a notice was never received by the writ petitioner and this has been articulated in Paragraph 5 of the affidavit filed in support of the writ petition. The second point is that the impugned order, after referring to a notice dated 18.03.2019, states that proposal dated 02.04.2019 has been confirmed.

9. Learned counsel points out that if the proposal itself is dated 02.04.2019, a notice giving opportunity could not have been sent on 18.03,2019.

10. Aforesaid argument was examined after hearing revenue counsel. There is no material before this Court to demonstrate that notice has been duly served on the writ petitioner.

11. Be that as it may, in the light of the contents of the impugned order i.e, proposal being 02.04.2019, submission of learned counsel for writ petitioner that 18.03.2019 notice could not have been a notice giving an opportunity of being heard is acceptable.

12. What is of utmost relevance is, as mentioned supra, instant impugned order, without any disputation, has been passed inter alia under Section 22(4) of TNVAT Act.

13. Learned counsel for writ petitioner draws the attention of this Court to proviso to Section 22(4) of TNVAT Act, which reads as follows:

> 'Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.'

14. Adverting to the proviso, learned counsel submits that when an order under Section 22(4) of TNVAT Act is passed, it is imperative that the dealer should be given a reasonable opportunity of bearing heard. This Court is convinced that the impugned order has to be set aside on the ground of reasonable opportunity of being heard not being given to the writ petitioner i.e., personal hearing not being given to the writ petitioner.

15. In the light of the narrative thus far, this Court passes the following order:

a) The impugned order dated 26,04.2019 bearing reference CST No.945621/2011-12 is set aside solely on the ground of personal hearing in accordance with proviso to Section 22(4) of TNVAT Act not being given to the writ petitioner. In other words, this Court does not express any opinion on the merits of the matter;

b) Respondent is directed to issue notice afresh to the writ petitioner, give a reasonable opportunity of being heard to the writ petitioner and pass orders afresh within a period of eight weeks from the date of receipt of a copy of this order.

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

Sd/-
Deputy Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

gpa

To

The Sales Tax Officer
Krishnagiri Assessment Circle
Krishnagiri

+1cc to Mr.R.Senniappan, Advocate sr.53561
+1cc to Special Government Pleader sr.54160

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cp(co)
nr 26/07/2019