IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 03.07.2019

Coram
THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.18698 of 2019
&
W.M.P.No.18044 of 2019

Bharat Heavy Electricals Limited
Represented by its Deputy General Manager
Finance
Mr.N.Ramesh
Indira Gandhi Industrial Complex
Ranipet ...Petitioner

vs.

The Assistant Commissioner (ST)
Ranipet (SIPCOT)
Ranipet .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the files of the respondent herein in CST 1141686/2016-17 dated 26.04.2019 and to quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.Mohammed Shaffiq
Special Government Pleader (Taxes)

ORDER

Mr.N.Inbarajan, learned counsel on record for writ petitioner is before this Court. Mr.Mohammed Shaffiq, learned Special Government Pleader (Taxes) accepts notice on behalf of lone 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. In the light of the trajectory the hearing has taken today, it may not be necessary to advert to facts in great detail. In other words, short facts shorn of elaboration will suffice for appreciating this order.

4.Suffice to say that the impugned in the instant writ petition is an Assessment Order dated 26.04.2019.

5.Though the impugned order is assailed on several grounds going by the affidavit filed in support of the writ petition, learned counsel for writ petitioner abridged his submission to one aspect of the matter. Adverting to Sub-sections (4) and (5) of Section 22 of 'Tamil Nadu Value Added Tax Act, 2006' (Tamil Nadu Act 32 of 2006)', hereinafter 'TNVAT Act' for brevity, it was submitted that vide the impugned order 150% penalty has been levied and the provisos to aforesaid two sub-sections, namely of sub-sections (4) and (5) of Section 22 of TNVAT Act make it mandatory or in other words statutorily imperative for the respondent to give the dealer a reasonable opportunity of being heard. In other words, it is the pointed submission of learned counsel for writ petitioner that personal hearing is mandatory and statutorily imperative in the light of provisos to Section 22(4) and 22(5) of TNVAT Act.

6. Faced with the above situation, learned State counsel reiterated the contents of the impugned order. To be noted, as alluded to supra, notwithstanding the affidavit filed in support of the writ petition, learned counsel for writ petitioner abridged and restricted his submission to the lone point of personal hearing not being given.

7. A perusal of the impugned order reveals that no personal hearing has been given and there is no other material placed before this Court to demonstrate that a personal hearing, which has been statutorily described as 'reasonable opportunity of being heard' has been given to the writ petitioner. The petitioner has been mulcted with the penalty of 150% by the impugned order. This leaves this Court with an inevitable sequittur that the impugned order is liable to be set aside on the ground of 'a reasonable opportunity of being heard' i.e., personal hearing, not being given to the writ petitioner though penalty of 150% has been levied inter alia under Section 22(5) of TNVAT Act.

8. This Court, therefore, passes the following order:

a) Impugned order dated 26.04.2019 bearing reference CST 1141686/2016-17 is set aside solely on the ground of personal hearing as mandated in the provisos to Section 22(4) and 22(5) of TNVAT Act having not been given. In other words, it is made clear that this Court does not express any opinion or view whatsoever on the merits of the matter.

b) By consent of learned counsel on both sides, personal hearing is now fixed on 02.08.2019 (Friday) at 12 Noon. The venue shall be the Office of the respondent.

c) Learned counsel for writ petitioner, on instructions, submits that the writ petitioner will avail of the personal hearing and make submissions besides submitting supporting documents, records and books of accounts to support the petitioner's stand;

d) If the writ petitioner does not avail the personal hearing on the aforesaid date, time and venue, the impugned order will automatically stand revived without further reference to this Court and the same shall be carried to its logical end by the Department.

e) if the writ petitioner avails of the personal hearing on the aforesaid date, time and venue, the respondent shall embark upon the exercise of considering all the objections of the writ petitioner besides examining supporting documents, records and books of accounts that may be produced by the writ petitioner and pass a fresh order in accordance with law.

f) Assessment order passed afresh in the aforesaid manner shall be communicated to the writ petitioner within seven working days under due acknowledgement.

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

Sd/-
Assistant Registrar(C/L)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner (ST)
Ranipet (SIPCOT)
Ranipet.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.55631
+1cc to the Government Pleader, S.R.No.56136

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PPA(CO)

RRS(08/08/2019)