IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.07.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.Nos.19086, 19089, 19090 & 19094 of 2019
and
WMP No.18453, 18454, 18457 & 18459 of 2019

M/s.Naveen Enterprises
Represented by its Partner G.Sarangapani
No.11/14 Amaravathy Nagar
West Cross Street
Arumbakkam, Chennai - 600 006. .. Petitioner in all W.Ps.

vs.

The State Tax Officer
Arumbakkam Assessment Circle
Chennai - 600 102. .. Respondent in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the respondent in his proceedings in Rc.Nos.270/2016/A4/(2012-13), 270/2016/A4/(2013-14) 270/2016/A4/(2014-15) and 270/2016/A4/(2015-16) respectively quash the assessment order dated 21.05.2019 passed therein and pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice.

For Petitioner (In all W.Ps.) : Mr.P.V.Sudakar
For Respondent (In all W.Ps) : Ms.Dhanamadhri, Government Advocate.



COMMON ORDER

This common order will dispose of these four writ petitions.

2. Mr.P.V.Sudakar, learned counsel on record for sole writ petitioner in all these four writ petitions is before this Court. Ms.G.Dhanamadhri, learned Government Advocate, accepts notice on behalf of the lone official respondent in all these four writ petitions.

3. With consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

4. Considering the narrow compass on which these writ petitions turn owing to the trajectory which the hearing has taken today, it will suffice to give short facts shorn of elaboration.

5. All these four writ petitions, this Court is informed that, arise out of a common factual matrix. This Court is also informed that only the Assessment Years are different. Obviously, the numerical values are also different. The four Assessment years, which constitute the subject matter of four writ petitions are 2012-13 to 2015-16. The subject matter arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' (hereinafter referred to 'TNVAT Act' for brevity) and 'Tamil Nadu Value Added Tax Rules, 2007' ('TNVAT Rules' for brevity).

6. It is the case of the writ petitioner that writ petitioner is a Contractor doing different types of work for Chennai Corporation. Writ petitioner is a dealer within the meaning of TNVAT Act and the writ petitioner was originally registered with Vadapalani Circle. This is with regard to first of the two Assessment Years viz., 2012-13 and 2013-14. Thereafter, there was a reorganisation of the Assessment Circles and the writ petitioner's registration was moved from Vadapalani Circle to Arumbakkam Assessment Circle. Therefore, the Assessment in Arumbakkam Assessment Circle is with regard to the last two Assessment Years viz., 2014-15 and 2015-16.

7. The core/central issue is 'Tax Deduction at Source' ('TDS' for brevity) made by Chennai Corporation for the work done by writ petitioner for Chennai Corporation. Production of TDS certificates is the central theme or central issue in these four writ petitions.

8. It is the case of the writ petitioner that monthly returns were being filed under Section 21 of TNVAT Act and there were deemed assessments under Section 22(2) of TNVAT Act. Thereafter, respondent issued four revisional notices for the four Assessment Years. One revisional notice is dated 10.11.2017 and the three other revisional notices are dated 25.10.2018. To all these four revisional notices, writ petitioner sent four separate objections all dated 09.01.2019. Post objections of writ petitioner, impugned orders came to be passed.

9. In the impugned orders, there is a reference to tax covered by TDS certificate. Objections have also been looked

into, but post impugned orders, respondent has written four separate communications all dated 31.05.2019. These communications are addressed to the Assistant Commissioner of the TDS Circle of the respondent Department viz., Commercial Taxes Department. A perusal of these letters reveals that the respondent, who passed the impugned orders, has requested his counterpart Assistant Commissioner viz., Assistant Commissioner of TDS Circle to give credit particulars pertaining to the dealer viz., writ petitioner.

10. Therefore, it comes to light clearly that the four impugned orders were passed on 21.05.2019 by the lone respondent in the instant writ petitions without details of the credit particulars with regard to TDS certificate. The reason being the aforesaid four letters dated 31.05.2019 are post decisional communications. It is obvious that the respondent ought to have had credit particulars qua TDS certificate before passing the impugned orders. It follows as an inevitable and indisputable sequitur that the impugned orders have been passed by the sole respondent without details of the credit particulars qua TDS certificates pertaining to the four Assessment Years with regard to writ petitioner.

11. Learned Revenue Counsel, adverting to the impugned order submitted that the objections of the writ petitioner have been considered. The objections of writ petitioner being considered does not cure the aforesaid defect of the lone respondent seeking credit particulars qua TDS certificates pertaining to the writ petitioner more particularly, pertaining to the four Assessment Years which form subject matter of the instant writ petitions. Therefore, this Court is unable to accept this submission.

12. This Court is informed that 'TIN' stands for Tax Identification Number'. In the impugned orders in at least one of the impugned orders pertaining to Assessment Year 2012-13, there is more than one error in giving the TIN number of the writ petitioner. In paragraph 1 it has been given as 338314262589, in paragraph 2 it has been given as 33831462589 and in the concluding paragraph it has been given as 3383462589. While in paragraph 1, it has 12 digits, in paragraph 2 it has 11 digits and in concluding paragraph it is 10 digits.

13. This Court is informed that this is a typographical error. Though obvious, these typographical errors will also have to be corrected when the assessment is done afresh pursuant to this order. This Court is constrained to observe that it is imperative that efforts have to be taken to avoid such errors, as numerical values are very crucial in fiscal matters..

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

a) Four impugned orders all dated 21.05.2019 bearing Reference Nos.270/2016/A4/(2012-13), 270/2016/A4/(2013-14) 270/2016/A4/(2014-15) and 270/2016/A4/(2015-16) are set aside. To be noted, impugned orders are set aside on the sole ground that the credit particulars of TDS certificate have been sought for by the sole respondent, after the impugned orders. In other words, no opinion or view is expressed by this Court on the merits of the matter.

b) Sole respondent, after getting the credit particulars qua TDS certificates, which have been sought for vide aforementioned four separate letters dated 31.05.2019, shall send a notice to the writ petitioner fixing a personal hearing. This notice shall give with specificity date, time and venue of the personal hearing.

c) Writ petitioner shall avail of the personal hearing and it will be open to writ petitioner to submit documents that may be necessary to buttress the objections already sent besides making submissions on the credit particulars qua TDS certificate which obviously should be available with the sole respondent on the date of personal hearing.

d) Post personal hearing, lone official respondent shall redo the assessments and pass revised assessment orders afresh as expeditiously as possible and in any event within four weeks from the date of personal hearing.

These writ petitions are disposed of with the aforesaid directions. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Vsm

To

The State Tax Officer
Arumbakkam Assessment Circle
Chennai - 600 102.

+1cc to Mr.P.V.Sudakar, Advocate, S.R.No. 56045
+1cc to the Special Government Pleader, S.R.No. 56626

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JP(CO)
GN(05/08/2019)