IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR
W.P.No.21166 of 2019
and
W.M.P.Nos.20366 & 20368 of 2019

SRS Mining,
Represented by its Partner,
Mr.J.Sekar, Aged about 52 years
No.312, Elite Empire,
G-12, Valluvarkottam High Road,
Nungambakkam, Chennai - 600 034 ..Petitioner

vs

The Deputy Commissioner of Income Tax,
Central Circle 2(4),
No.46, M G Road,
Nungambakkam, Chennai - 600 034. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for records pertaining to the impugned order in C.No.ACLFS6523P/CC 2(4)/2019-20 dated 28.06.2019 issued by the Respondent herein insofar as it forecloses the right of cross examination by the petitioner and consequentially direct the Respondent to permit the petitioner to exercise the right of cross examination, and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.Nithyaesh Nataraj
for M/s.Nithyaesh and Vaibhav

For Respondent : Mr.A.N.R.Jayaprathap
Standing counsel

O R D E R

Mr.Nithyaesh Nataraj, learned counsel of M/s.Nithyaesh and Vaibhav (Law Firm) on behalf of writ petitioner and Mr.A.N.R.Jayaprathap, learned Standing counsel on behalf of sole respondent are before this Court.

2. Owing to the trajectory which the hearing has taken today, the entire writ petition now turns on a very narrow

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

3. Suffice to say that subject matter of the instant writ petition is a scrutiny assessment qua the writ petitioner for Assessment Years 2011-2012 to 2017-2018. In the course of the proceedings, writ petitioner sought permission to cross examine three individuals namely Shri.K.Srinivasulu, Shri.S.Nagarathinam and Shri.S.Murugesan.

4. It is the case of the respondent that the request for cross examination was acceded to with regard to two out of the three individuals, namely Shri.S.Nagarathinam and Shri.S.Murugesan.

5. It is the further case of the Respondent that a communication i.e., an office letter dated 03.06.2019 was sent to the writ petitioner, intimating the writ petitioner that cross examination of the said two individuals can be done on 07.06.2019 at 11.30 a.m. Thereafter, respondent has sent a communication dated 28.06.2019 bearing reference C.No.ACLFS6523P/CC 2(4)/2019-20, stating that the writ petitioner did not respond to the 03.06.2019 communication and did not cross examine the two witnesses on 07.06.2019 and therefore, the request of the writ petitioner for cross examination is treated as exhausted. Aggrieved by the aforesaid 'communication dated 28.06.2019 bearing reference C.No.ACLFS6523P/CC 2(4)/2019-20' issued by the sole respondent, [hereinafter 'impugned communication' for brevity] instant writ petition has been filed.

6. Pivotal submission of learned counsel for writ petitioner is that the aforesaid communication dated 03.06.2019 was never received by the writ petitioner and it was a revelation of sorts for the writ petitioner when the impugned communication was received.

7. There is no material before this Court to demonstrate that communication dated 03.06.2019 was served on the writ petitioner. In any event, as the sole respondent has acceded to the request for cross examination, this Court is of the view that no prejudice would be caused, if the writ petitioner is given an opportunity to cross examine the aforesaid two individuals on a specified date.

8. To be noted, as alluded to supra in the narrative thus far, writ petitioner sought permission to cross examine three individuals, but permission was accorded to cross examine two individuals. On instructions, learned Revenue counsel submits that permission was accorded with regard to two individuals as

the other individual namely Shri.K.Srinivasulu has turned hostile.

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

a) The impugned communication dated 28.06.2019 bearing reference 'C.No.ACLFS6523P/CC 2(4)/2019-20' is set aside. To be noted, impugned communication is set aside solely for facilitating the writ petitioner to get an opportunity to cross examine and it is not set aside on merits. In other words, this Court is not expressing any view or opinion on merits of the matter.

b) By consent of both sides, it is now agreed that the date, time and venue for cross examination of aforesaid two individuals namely Shri.S.Nagarathinam and Shri.S.Murugesan shall be 01.08.2019 (Thursday), at 12.00 Noon in the office of the Deputy Commissioner of Income Tax, Central Circle-2(4), Investigation Wing, Room No.111, 1st Floor, No.46, Mahatma Gandhi Road, Chennai - 34.

c) It is submitted on instructions that the writ petitioner's lawyer / Advocate shall cross examine the aforesaid two witnesses on the aforesaid date, time and venue.

d) After cross examination in the aforesaid manner, it is open to the respondent to reissue the impugned communication with regard to aspects other than cross examination aspect.

10. As these directions douse the anxiety of the writ petitioner, this writ petition is disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

The Deputy Commissioner of Income Tax,
Central Circle 2(4),
No.46, M G Road,
Nungambakkam, Chennai - 600 034.

+1cc to M/s.Nithyaesh and Vaibhav, Advocate SR.No.61057

W.P.No.21166 of 2019
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VG II(CO)
GMY(20/08/2019)