IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.07.2019

CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.21835, 21842 and 21846 of 2019
&
W.M.P Nos.21047, 21057, 21060 of 2019

SUSPA Pneumatics (India) Pvt. Ltd.,
Represented by its Director Mr.V.Sethumadhavan
(Guduvancheri-Tiruporur Road, Pandur Village
No.16, Kannivakkam PO
Guduvancheri - 603 202 .. Petitioner in all W.Ps

Vs.

The Assistant Commissioner (ST)
Thirukazhukundram Assessment Circle
No.42, Wahab Nagar
Thirukazhukundram - 603 109 ... Respondent in all W.Ps

Prayer in all W.Ps : Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records in the proceedings in Assessment Order TIN 33920920940/2011-12, 33920920940/2012-13 and 33920920940/2015-16, all dated 28.06.2019 issued by the respondent and quash the same as arbitrary and illegal.

For Petitioner in all the Petitioner : Mr.Joseph Prabakar

For Respondent in all the Petitioner : Ms.G.Dhanamadhri Government Advocate

COMMON ORDER

This common order will dispose of both these writ petitions.

2. Mr.Joseph Prabakar, learned counsel on record for the writ petitioner in all these three writ petitions and Ms.G.Dhanamadhri, learned Government Advocate, who has accepted notice on behalf of the lone official respondent in all these three writ petitions are before this Court.

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

4. It is submitted without any disputation or disagreement that all these three writ petitions arise out of common facts and they arise under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act, 32 of 2006)', hereinafter 'TNVAT Act' for brevity. This Court is informed that only the assessment orders are different in these three writ petitions and the three assessment years, which form subject matter of these writ petitions, are 2011-12, 2012-13 and 2015-16. Obviously, the numerical values are also different.

5.Considering what unfurled in the hearing today, this Court is of the considered view that it is not necessary to set out facts in great detail. Factual matrix in a nutshell or in other words, facts which are imperative for appreciating this common order will suffice.

6. Facts shorn of elaboration are that writ petitioner is a dealer under TNVAT Act, that the writ petitioner was filing monthly returns under Section 21 of TNVAT Act, that there was deemed assessment under Section 22(2) of TNVAT Act, that the Enforcement Wing officials of the Commercial Taxes Department conducted an audit in the business premises of the writ petitioner on 06.10.2016, that the Enforcement Wing officials noticed certain particulars, which according to them, are discrepancies inter alia qua reversal of ITC on ineligible commodities, that the writ petitioner paid certain sums qua reversal at the time of audit itself, that a revisional notice was issued by the respondent owing to audit by Enforcement Wing officials, that the writ petitioner sent a detailed reply and that thereafter three separate revised Assessment Orders under Section 27 of TNVAT Act bearing reference TIN 33920920940/2011-12, 33920920940/2012-13 and 33920920940/2015-16, all dated 28.06.2019 came to be passed and these three revised Assessment Orders under Section 27 of TNVAT Act shall hereinafter be referred to as 'impugned Assessment Orders' in plural and 'impugned Assessment Order' in singular wherever necessary.

7. These three writ petitions have been filed assailing the impugned Assessment Orders. To be noted in each writ petition one impugned Assessment Order has been assailed.

8. Notwithstanding very many averments in the affidavits filed in support of the writ petitions and several grounds raised in the affidavits filed in support of the writ petitions, learned counsel for writ petitioner projected one submission as pivotal and primordial submission. Learned counsel for writ petitioner, drawing the attention of this Court

to the impugned Assessment Orders submitted that 100% penalty has been levied under Section 27(4) of TNVAT Act. Adverting to the proviso to Section 27(4), learned counsel submitted that no penalty under this provision shall be levied without giving an opportunity of showing cause against such imposition.

9. This Court also notices entire sub-section (4) of Section 27 of TNVAT Act i.e., this provision together with the proviso whicih was inserted in the statute book on and with effect from 29.01.2016, but it is also noticed that the proviso makes it statutorily imperative to give reasonable opportunity of showing cause being given before imposition of penalty was there even prior to 29.01.2016. In the instant case, though a provisional notice was issued, there is nothing to show that the writ petitioner dealer was given a reasonable opportunity of showing cause against imposition of penalty under Section 27(4).

10. Considering the peculiar facts and circumstances of the case and nature of the objections that are being raised, this Court is of the considered view that in the instant case it will be appropriate to direct the respondent to give an opportunity of personal hearing to the writ petitioner.

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

a) Impugned orders bearing reference TIN 33920920940/2011-12, 33920920940/2012-13 and 33920920940/2015-16, all dated 28.06.2019 are set aside. To be noted, impugned Assessment Orders are set aside without expressing any opinion on the merits of the matter. In other words, impugned Assessment Orders are set aside solely on the ground of non-adherence to proviso to Section 27(4) as penalty under Section 27(4) has been imposed vide impugned Assessment Orders;

b) By consent of both sides, personal hearing is fixed on 08.08.2019, Thursday, at 12 Noon in the office of the respondent. There shall be no separate show-cause notice and writ petitioner will file further objections, if any, particularly with regard to imposition of penalty based on the impugned revised Assessment Orders though the same have now been set aside;

c) If the writ petitioner does not avail the personal hearing on the aforesaid date, time and venue, impugned revised Assessment Orders will stand revived automatically without reference to this Court;

d) If the writ petitioner avails the personal hearing and file additional objections together with supporting documents particularly with regard to imposition of penalty under Section 27(4) of TNVAT

Act, the respondent shall consider all objections, redo the assessment and pass revised Assessment Orders as expeditiously as possible and in any event within eight weeks from the date of the personal hearing.

e) The redone revised Assessment Orders shall be communicated to the writ petitioner in accordance with the applicable rules under TNVAT Act under due acknowledgement.

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//
Sub Assistant Registrar

gpa

To

The Assistant Commissioner (ST)
Thirukazhukundram Assessment Circle
No.42, Wahab Nagar
Thirukazhukundram - 603 109.

+1cc to Mr.M.Joseph Prabakar, Advocate, S.R.No.63989
+1cc to the Government Pleader(Taxes), S.R.No.64272

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VG I(CO)

RRS(28/08/2019)