IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.21988 of 2019
and W.M.P.No.21230 of 2019

M/s.Sri Ram Electronics
Rep. by its Proprietor
No.24, Siva Subramania Vaniga Valagam
Dharmapuri. .. Petitioner

Vs.

Assistant Commissioner (ST)
Dharmapuri Assessment Circle
Dharmapuri. .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the respondent and to quash the assessment proceedings in TIN 33263281992/2012-13 dated 10.04.2019 as illegal and direct the respondent to consider the record filed on 26.05.2018 after providing an opportunity of personal hearing the petitioner and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and render justice.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mr.Mohammed Shaffiq,
Special Government Pleader.

ORDER

Mr.C.Baktha Siromoni, learned counsel on record for writ petitioner and Mr.Mohammed Shaffiq, learned Special Government Pleader (Taxes), who accepts notice on behalf of the lone official respondent are before this Court.

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

3. Main writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for the sake of convenience and clarity.

4. In the light of the scope of the instant writ petition and in the light of the issue turning on a very narrow compass, short facts shorn of elaboration will suffice. Short facts are to the effect that writ petitioner is a dealer under TNVAT Act, that 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 case of the writ petitioner was selected for scrutiny under Section 22(3) of TNVAT Act, that post scrutiny, summons dated 24.05.2017 and revisional notice dated 07.06.2018 were issued, that according to respondent, writ petitioner did not respond and therefore, respondent passed a revised assessment order under Section 27 of TNVAT Act, being order signed on 10.04.2019, bearing Reference No.TIN 33263281992/2012-13 (hereinafter 'impugned order' for the sake of brevity) levying tax inter alia by reversing 'Input Tax Credit ('ITC' for brevity) and levying penalty under Section 27(4) of TNVAT Act.

5. Assailing the impugned order, instant writ petition has been filed. Though several averments have been made in the affidavit filed in support of instant writ petition and though several grounds/contentions have been raised in the affidavit filed in support of instant writ petition, learned counsel for writ petitioner, abridged his submissions and limited the same to one point. That one point is, the impugned order, which as mentioned earlier is a revised assessment order under Section 27 of TNVAT Act has been passed on the basis that the writ petitioner has not responded to summons and revisional notice. It was pointed out by learned counsel for writ petitioner that this is incorrect as the writ petitioner has sent a reply dated 26.05.2018. A photo copy of this reply dated 26.05.2018 has been placed before this Court, as part of the case file. There is an acknowledgement in the same, which shows that it has been hand delivered to respondent on 25.06.2018. Furthering his submission in this direction, learned counsel for writ petitioner submitted that on 25.06.2018, writ petitioner's aforesaid reply was received by the predecessor incumbent qua respondent Assistant Commissioner's office, but the incumbent, who passed the impugned order has not noticed the same.

6. In the aforesaid backdrop, learned Revenue Counsel, submitted that the impugned order cannot be found fault with as an officer who has not received the objections has proceeded on the basis that writ petitioner has not responded to the summons and revisional notice. It was submitted by learned State Counsel that when a dealer does not respond to the revisional notice, an assessing Officer has no option, but to proceed with the revised assessment, more so in a case, which is selected for scrutiny under Section 22(3) of TNVAT Act. Though this submission in absolute terms is correct, in the instant case, on facts, writ petitioner is able to demonstrate that objections/reply to the revisional notice was in fact sent that the same was hand delivered to the predecessor incumbent of the respondent Assistant commissioner's Office and therefore it cannot be gainsaid that respondent was correct in proceeding on the premise that there were no objections to the revisional notice.

7. This Court also noticed two other features in this case. One is, impugned order, as placed before this Court, does not contain a date. It contains only the month and year. Month is shown as 04 and the year is shown as 2019. However, the

impugned order has been signed on 10.04.2019. This Court is of the considered view that an order, more so a revised assessment order under Section 27 of TNVAT Act cannot be sent to a dealer without even a date i.e., leaving the date blank. In other words, there cannot be a undated revised assessment order. Be that as it may, as mentioned supra, in the revised assessment order penalty under Section 27(4) has also been imposed. Proviso to Section 27(4) of TNVAT Act makes it statutorily imperative to give a reasonable opportunity to the dealer, when penalty is imposed under Section 27(4).

8. Owing to the narrative thus far, this Court is of the considered view that owing to the facts and circumstances of the instant case, this is a fit case to remand the matter back to respondent with a direction to redo the revised assessment order. Therefore, the following order is passed:

a) impugned order being a revised assessment order under Section 27 of TNVAT Act being an undated order (signed on 10.04.2019) bearing Reference No.TIN.33263281992/2012-13 is set aside. To be noted, impugned order is set aside only for the purpose of enabling the respondent to consider the objections sent by writ petitioner. In other words, no opinion or view is expressed by this Court on merits of the matter.

b) Respondent shall consider the reply/objections of writ petitioner, being reply dated 26.05.2018, redo the revised assessment and pass revised assessment order afresh, as expeditiously as possible and in any event within eight weeks from the date of receipt of a copy of this order.

Writ petition is disposed of with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST)
Dharmapuri Assessment Circle, Dharmapuri.

+1cc to The Special Government Pleader(Taxes) Sr.No.64607

akm/30.08.19 /3p-3c/