IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.24652 of 2019
and W.M.P.No.24307 of 2019

GINGER WHEEL APPARELS
Represented by its Proprietor
Mr.Amit Baid
10/89A VRS Complex
Ammapalayam Main Road
Avinashi Taluq, Tirupur .. Petitioner

Vs.

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

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records on the files of the respondent in TIN No.33952084778/2016-17 dated 19.06.2019 and quash the same.

For Petitioner : Mr.K.Narayanan
for Mr.N.Inbarajan

For Respondents : Mr.V.Haribabu
Additional Government Pleader

ORDER

Mr.K.Narayanan, learned counsel representing counsel on record for writ petitioner and Mr.V.Haribabu, learned Additional Government Pleader, who has accepted notice on behalf of sole 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.Subject matter of main writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', hereinafter 'TNVAT Act' for brevity.

4.Writ petitioner is a dealer under TNVAT Act, writ petitioner was filing monthly returns under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act.

5.When things stood thus, business premises of the writ petitioner was inspected by the Enforcement Wing from 16.08.2016 to 19.08.2016. During inspection, Enforcement wing noticed, what according to the Enforcement Wing, are defects. According to the Enforcement Wing officials, defects are three in number and a proposal was made.

6.Based on the proposal, respondent issued a revisional notice dated 28.03.2019 to the writ petitioner and writ petitioner responded with objections dated 29.04.2019. Thereafter, the respondent thought it fit to hold a personal hearing and the same was held on 20.05.2019.

7.Thereafter, the respondent passed a revised assessment order dated 19.06.2019 (hereinafter 'impugned order' for brevity) which has been called in question in the instant writ petition. To be noted, impugned order pertains to the Assessment Year 2016-2017.

8. Though the impugned order does not mention the provision of law under which it has been made, it is submitted without disputation or disagreement before this Court that the impugned order has been made under Section 27(1)(a) and 27(1)(b) of TNVAT Act. Going by the proviso to the said sections, it will suffice if a reasonable opportunity is given to the dealer to show-cause against the impugned order. In other words, it is not statutorily imperative to hold a personal hearing. However, in a given case, at the discretion of the respondent, the respondent is not precluded from affording an opportunity of personal hearing to the writ petitioner depending on the facts and circumstances of the case. To be noted, this is one such case where the respondent has afforded personal hearing to the writ petitioner and the same has been availed by the writ petitioner.

9. Be that as it may, notwithstanding several averments made in the affidavit filed in support of the writ petition, several grounds raised and several contentions canvassed in the affidavit filed in support of the writ petition, at the hearing, the argument assailing the impugned order was focused on one pivotal point and that one pivotal point is that respondent has noticed the objections made by the writ petitioner and reiteration of the objections in the personal hearing, but has not considered the same as the respondent has not even said in the impugned order that the objections are rejected, much less

has the respondent given any reasons.

10. A perusal of impugned order reveals that this argument of the writ petitioner holds good and holds water with regard to Defects 1 and 3, but with regard to defect No.2 i.e., price variation, the respondent has given reasons. However, severing that one defect i.e., price variation from the other two can lead to complexities. Therefore, this Court considers it appropriate to set aside the impugned order and remit the matter back to the respondent with a direction to redo the revised assessment after affording an opportunity of personal hearing to the writ petitioner.

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

a) The impugned order dated 19.06.2019 bearing reference TIN No.33952084778/2016-17 is set aside. To be noted, impugned order is set aside solely on the ground that the objections raised and reiteration of the same in the personal hearing have not been considered and it has not even mentioned that it is rejected. In other words, impugned order is set aside without expressing any view or opinion on the merits of the matter;

b) Respondent is directed to issue notice of personal hearing afresh and redo the revised assessment as expeditiously as possible and in any event within eight weeks from the date of receipt of a copy of this order; and

c) To be noted, personal hearing is not statutorily imperative as impugned order has been made under Sections 27(1)(a) and 27(1)(b). This course is being adopted as respondent has chosen to give an opportunity of personal hearing owing to facts and circumstances of the instant case. The redone revised Assessment Order shall be communicated to the writ petitioner under due acknowledgement in accordance with the Rules in this regard under TNVAT Act.

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

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

Assistant Commissioner (ST)
Avinashi Assessment Circle
Avinashi

+1 CC to Mr.N.Inbarajan, Advocate sr 72349.
+1 CC to Spl. Govt. Pleader(T) sr 7349

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SV(CO)
SP(19/09/2019)