IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.24138 of 2019
and W.M.P.No.23931of 2019

SagTaur Universal
Represented by its Proprietrix Mrs.Rakhi Deepak
No.2/20, Poes Road, First Street
Teynampet
Chennai- 600 018
(earlier at Flat No.3-10-4, Door No.216
Arihant Majestic Towers
Chennai - 600 107) .. Petitioner

Vs.

The Assistant Commissioner (CT)
Vadapalani Assessment Circle
No.1, Greams Road, Annexure Building
Chennai - 600 006 .. Respondent

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 CST No.815357/2012-13 dated 28.05.2019 passed by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.V.Haribabu
Additional Government Pleader

ORDER

Mr.Joseph Prabakar, learned 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.Considering the narrow scope on which the instant writ petition now turns suffice to say that subject matter of instant 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 and a revised Assessment Order came to be passed against the writ petitioner under Section 22(4) of TNVAT Act being 'order dated 28.05.2019 bearing reference CST No. 815357/2012-13' and the same shall hereinafter be referred to as 'impugned order' for brevity.

5.To be noted, the impugned order mentions that assessment has been made under Section 22(2) of TNVAT Act. Section 22(2) of TNVAT Act deals with deemed assessment. Further to be noted, this matter was first listed on 21.08.2019 for admission. State counsel accepted notice and he is today before this Court after getting instructions.

6. On instructions, it is submitted that Section 22(2) is an inadvertent error and the impugned order has been made under Section 22(4) of TNVAT Act.

7. In the light of undisputed position that the impugned order has been made under Section 22(4) of TNVAT Act, proviso to Section 22(4) becomes significant. According to proviso to Section 22(4) of TNVAT Act, it is statutorily imperative that a reasonable opportunity of being heard is given to the writ petitioner. In the instant case, there is no disputation or disagreement that personal hearing has not been held and therefore, reasonable opportunity of being heard has not been given to the writ petitioner. To be noted, there is nothing in the impugned order to show that reasonable opportunity of being heard was given and on instructions, it is submitted that no personal hearing was held.

8. In the aforesaid backdrop, the following order is passed.

a) Impugned order dated 28.05.2019 bearing reference CST No.815357/2012-13 is set aside. Impugned order is set aside on the sole ground of violation of proviso to Section 22(4) of TNVAT Act. In other words, impugned order is set aside without expressing any opinion on merits of the matter.

b) As the impugned Assessment Order has been set aside, though obvious it is made clear that any consequential order or attachment made consequent to the the impugned revised assessment, more particularly an order of attachment dated 24.07.2019 bearing reference TIN 33531462657/A3/2019 shall stand raised.

c) By consent of both sides, personal hearing is now fixed on 16.09.2019. The time shall be 12 Noon and the venue shall be the office of the respondent.

d) Writ petitioner undertakes to attend the personal hearing on the aforesaid date, time and venue. Thereafter, the respondent shall redo the Assessment Order on the merits of the submissions made / materials pressed into service in the personal hearing, in accordance with law as expeditiously as possible and in any event, within four weeks from the date of personal hearing.

e) Revised Assessment Order so made shall be communicated to the writ petitioner under due acknowledgement within seven workings days from the date of revised Assessment Order.

This 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

gpa

To

The Assistant Commissioner (CT)
Vadapalani Assessment Circle
No.1, Greams Road, Annexure Building
Chennai - 600 006.

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.72951
+1cc to the Government Pleader, S.R.No.73490

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EV(CO)
CS/03/10/2019