IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :29.08.2019
CORAM
THE HON'BLE MR.JUSTICE M.SUNDAR
W.P.Nos.25344, 25348, 25349, 25351 & 25353 of 2019
and
W.M.P.Nos.24886, 24888, 24891, 24894 & 24895 of 2019

M/s.Sintex BAPL Ltd.,
No.C.11, Sipcot Industrial Park,
Irunkattukottai,
Sriperumbudur - 602 105
Represented by its
Senior Manager-Accounts,
Mr.C.Kalyana Kumar. ..Petitioner
in all W.Ps

vs

1.Assistant Commissioner(CT),
Sriperumbudur Assessment Circle,
No.4/109, Varadharajapuram,
Nazarathpet,
Chennai - 600 123.

2.The Government of Tamil Nadu,
Rep.by its Secretary,
Commercial Taxes Department,
Fort St.George,
Chennai - 600 009. ..Respondents
in all W.Ps

Prayer in W.P.No.25344 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order passed by the First Respondent in No.TIN/33051664293/2015-16 dated 31.05.2019 demanding additional levy, Input Tax Credit reversal and imposing penalties and quash the same and pass such other further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.

Prayer in W.P.No.25348 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order passed by the First Respondent in No.TIN/33051664293/2014-15 dated 31.05.2019 demanding additional levy, Input Tax Credit reversal and imposing penalties and quash the same and pass such other further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.

Prayer in W.P.No.25349 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order passed by the First Respondent in No.TIN/33051664293/2013-14 dated 31.05.2019 demanding additional levy, Input Tax Credit reversal and imposing penalties and quash the same and pass such other further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.

Prayer in W.P.No.25351 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order passed by the First Respondent in No.TIN/33051664293/2012-13 dated 31.05.2019 demanding additional levy, Input Tax Credit reversal and imposing penalties and quash the same and pass such other further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.

Prayer in W.P.No.25353 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order passed by the First Respondent in No.TIN/33051664293/2011-12 dated 31.05.2019 demanding additional levy, Input Tax Credit reversal and imposing penalties and quash the same and pass such other further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.

For Petitioner : Mr.T.R.Ramesh
(in all W.Ps)

For Respondents : Ms.G.Dhanamadhri
Government Advocate
(in all W.Ps)

COMMON ORDER

Mr.T.R.Ramesh, learned counsel on record for writ petitioner in all these five writ petitions and Ms.G.Dhanamadhri, learned Government Advocate, who has accepted notice on behalf of both the respondents are before this Court.

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

3. Considering the narrow compass on which the instant writ petitions now turn, short facts shorn of elaboration and micro details / particulars will suffice.

4. This Court is informed without any disputation or disagreement that subject matter of all these five writ petitions arise under 'Tamil Nadu Value Added Tax Act 2006 (Tamil Nadu Act 32 of 2006)' [hereinafter 'TNVAT Act' for brevity]. This Court is also informed without any disputation or disagreement that all these five writ petitions arise out of a common factual matrix and only the Assessment Years are different. To be noted, the five Assessment Years, which constitute subject matter of instant writ petitions are 2015-16, 2014-15, 2013-14, 2012-13, 2011-12 (five successive Assessment Years). Obviously, the numerical values are different. Be that as it may, what is of significance is, this Court is informed that the central theme / core issue in all these five writ petitions is the same. Therefore, these five writ petitions shall stand disposed of by this common order.

5. Short facts shorn of elaboration are that the 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 an inspection was conducted by the Enforcement Wing officials in the business premises of the writ petitioner / dealer, that at the time of inspection, what according to Enforcement Wing officials are defects were noticed, that revisional notices were issued and writ petitioner dealer's reply to the revisional notices were also sent, that there was a personal hearing on 19.10.2018, that thereafter five separate revised assessment orders bearing reference No.TIN/33051664293/2015-16,

No.TIN/33051664293/2014-15, No.TIN/33051664293/2013-14, No.TIN/33051664293/2012-13 and No.TIN/33051664293/2011-12, all dated 31.05.2019 [hereinafter 'impugned orders' in plural and 'impugned order' in singular both for the sake of brevity] came to be passed.

6. The impugned orders do not mention the provisions of law under which the same have been passed, but this Court is informed at the hearing that the impugned orders were passed under Section 27(1)(a) of TNVAT Act.

7. Before this Court proceeds further, it is necessary to notice the proviso, which operates with regard to proceedings under Section 27(1)(a) of TNVAT Act. This Court had already taken a view that with regard to the proviso to Section 27(1)(a), reasonable opportunity to show cause against such orders will suffice and it is not statutorily imperative to hold personal hearing unlike proviso to Section 22(4) of TNVAT Act. This is a case where the 1st respondent Assessing officer, in his discretion, has thought it fit to give an opportunity of personal hearing to the writ petitioner dealer. In this regard, it is also noticed that this Court has already taken the view that personal hearing not being statutorily imperative for proceedings of revised assessment under Section 27, does not denude the Assessing officer of his discretion to hold personal hearing if facts and circumstances of a given case so demand. This is one such case, where the 1st respondent Assessing officer has thought it fit to afford an opportunity of personal hearing to the writ petitioner.

8. Having said this, it is now necessary to examine what transpired in the personal hearing, which is now the pivotal submission on which challenge to the impugned orders is predicated. Writ petitioner has (without any disputation or disagreement) sent reply / objections dated 19.10.2018 in response to one of the revisional notices being a revisional notice dated 20.09.2018. To be noted, this revisional notice dated 20.09.2018 has been cited as No.2 in reference, in the impugned orders itself.

9. This 19.10.2018 reply / objections of the writ petitioner dealer to the 20.09.2018 revisional notice, was received by the office of the 1st respondent only on 26.10.2018, but the personal hearing was held on 19.10.2018 prior to receipt of these objections / reply. What gains

significance in this matter is that the revisional notice dated 20.09.2018 has been cited as No.2 in reference in the impugned orders itself. Therefore, it comes out clearly that revisional notice dated 20.09.2018 has been taken into account by the 1st respondent in passing the impugned orders. If the revisional notice dated 20.09.2018 has been taken into account as one of the determinants for making the impugned orders, it follows as a sequitur that it is imperative that the 1st respondent Assessing officer should have also considered the writ petitioner dealer's reply / objections to the same, as alluded to supra. The reply / objections to the same dated 19.10.2018 was received in the office of the 1st respondent only on 26.10.2018. Therefore, it emerges clearly and puts it beyond any pale of doubt that the personal hearing was held before receipt of the reply to the revisional notice.

10. Responding to the aforesaid scenario, which unfurled in the hearings on 27.08.2019 and 29.08.2019 (today), learned Revenue counsel, on instructions, submitted that 19.10.2018 was not the only personal hearing and several personal hearings had been held prior to the said date. The records and files of the department are also before this Court and learned Revenue counsel, submits that there are no notings, regarding the earlier personal hearings, but submits on instructions from the officer present in Court that personal hearings were infact held. Be that as it may, in the absence of records, this Court has to necessarily go by the impugned orders and in any event, impugned orders cannot be improved by a counter affidavit or by the respondent's records, merely throw light on what has already been articulated in the impugned order. In this case, the impugned orders also do not mention about any personal hearing prior to 19.10.2018.

11. Therefore, in the light of the narrative thus far and dispositive of reasoning set out supra, this Court is left with the considered view that this is an appropriate case to set aside the impugned orders and remit the matter back to the 1st respondent, for redoing the revised assessment after holding a personal hearing and taking into account the writ petitioner dealer's reply / objections dated 19.10.2018 sent in response to revisional notice dated 20.09.2018, owing to which the following order is passed:

a) Impugned orders being reference

No.TIN/33051664293/2015-16, No.TIN/33051664293/2014-15, No.TIN/33051664293/2013-14, No.TIN/33051664293/2012-13 and No.TIN/33051664293/2011-12, all dated 31.05.2019 are set aside. It is made clear that the impugned orders are set aside on the sole point that personal hearing was held prior to receipt of writ petitioner dealer's response to the revisional notice dated 20.09.2018 referred to in the impugned orders and not on any other grounds. In other words, it is made clear that this Court has not expressed any opinion or view on the merits of the matter.

b) By consent of both sides, personal hearing is now fixed on 12.09.2019 (Thursday) at 11.00 a.m (Forenoon) and the venue shall be the office of the 1st respondent.

c) The writ petitioner dealer shall avail of the opportunity and shall make submissions by perambulating within the reply / objections dated 19.10.2018, which has already been sent.

d) After personal hearing in the aforesaid manner, 1st respondent shall redo the revised assessment and pass a revised assessment order as expeditiously as possible and in any event within eight (8) weeks from the date of the personal hearing.

e) The revised assessment orders redone in the aforesaid manner, shall be communicated to the writ petitioner under due acknowledgement in accordance with the relevant rules in this regard under the TNVAT Act.

12. These five writ petitions are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.Assistant Commissioner(CT),
Sriperumbudur Assessment Circle,
No.4/109, Varadharajapuram,
Nazarathpet,
Chennai - 600 123.

2.The Secretary,
Government of Tamil Nadu,
Commercial Taxes Department,
Fort St.George,
Chennai - 600 009.

+5ccs to Mr.R.Ramesh , Advocate SR.No. 74761 to 74765
+1 cc to Government Pleader(Tax) Sr.No. 7580

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A.SK(20/09/2019)