IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.11.2019
CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.Nos.28150, 28155, 28162 and 28166 of 2019
and
W.M.P.Nos.27801, 27804, 27805, 27807, 27814, 27816 and 27821 of 2019

M/s.Siva Swathi Singan Velagapudi
Consortium Madhavaram
Rep. By its Authorised Signatory
Mr.Phani Chandra
Plot No.17, Aurora Colony Road,
No.3, Banjara hills,
Hyderabad – 500 034. ..Petitioner in all Writ Petitions

Vs.

1.The Assistant Commissioner (ST)
Saidapet Assessment Circle,
C.T. Annexure Building, 5th Floor,
No.1, Greams Road,
Chennai – 600 006.

2.The Commercial Tax Officer,
Pudukottai-I Assessment Circle,
Pudukottai. ... Respondents in all Writ Petitions

Prayer in WP No.28150 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in TIN.33196223895/2013-14 dt.26.09.2018, quash the same as ultravires of the provisions of the Tamilnadu Value Added Tax Act, 2006 and further direct the first respondent to re-do the assessment in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006 by affording a reasonable and adequate opportunity including an opportunity of being heard.

Prayer in WP No.28155 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in TIN.33196223895/2014-15 dt.26.09.2018, quash the same as ultravires of the provisions of the Tamilnadu Value

Added Tax Act, 2006 and further direct the first respondent to re-do the assessment in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006 by affording a reasonable and adequate opportunity including an opportunity of being heard.

Prayer in WP No.28162 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in TIN.33196223895/2015-16 dt.26.09.2018, quash the same as ultravires of the provisions of the Tamilnadu Value Added Tax Act, 2006 and further direct the first respondent to re-do the assessment in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006 by affording a reasonable and adequate opportunity including an opportunity of being heard.

Prayer in WP No.28166 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in TIN.33196223895/2013-14/2014-15/2015-16 dt.26.07.2019, quash the same as ultravires of the provisions of the Tamilnadu Value Added Tax Act, 2006 and further direct the first respondent to re-do the assessment in accordance with the provisions of the Tamilnadu Value Added Tax Act, 2006 by affording a reasonable and adequate opportunity including an opportunity of being heard.

In all WPs

For Petitioner : Mr.V.Sundareswaran

For Respondents: Mr.M.Hariharan
Addl. Govt. Pleader

COMMON ORDER

Writ Petition Nos.28150, 28155 and 28162 of 2019 are filed against the order of assessment relevant to the years 2013-2014, 2014-2015 and 2015-2016 respectively.

2. Writ Petition No.28166 of 2019 is filed against the demand notice arising out of the tax liability fixed by the assessing officer in respect of above mentioned three assessment years.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the

respondents.

4. The impugned orders of assessment are challenged mainly on the ground of violation of principles of natural justice. It is the specific case of the petitioner that the assessing officer has not issued any notice of proposal before passing the impugned orders. It is the further case of the petitioner that only the consequential demand notice which is put to challenge in WP No.28166 of 2019 was served on the petitioner.

5. When the matter was taken up for hearing on 03.10.2019 for admission, the learned Additional Government Pleader took notice for the respondents and sought time to get instructions. Accordingly, the matter was adjourned and thereafter listed today for further hearing. The learned Additional Government Pleader, based on instructions submitted that though notice of proposal was issued to the petitioner, unfortunately the records do not contain the acknowledgement in proof of such service of notice.

6. When the petitioner specifically contends that no such notice was served on them, the assessing officer is duty bound to satisfy this Court that such notice was served on them by placing proof of service. In this case, admittedly no such proof is placed. Therefore, this Court is left with no other option except to accept the contention of the petitioner that no such notice was served on them. The consequential order of assessment passed without an effective and proved service of notice on the petitioner cannot be sustained. Since this Court is inclined to interfere with the impugned orders only on the ground of principles of natural justice, it is not expressing any view on the merits of assessment, as it is for the assessing officer to re-do the same once again. Accordingly, Writ Petition Nos.28150, 28155 and 28162 of 2019 are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the assessing officer to re-do the assessment under the following terms :-

(a) The petitioner shall treat the impugned orders as notice of proposal and file their objection within a period of two weeks from the date of receipt of copy of the order ;

(b) On receipt of such objection, the assessing officer shall give opportunity of personal hearing to the petitioner and pass fresh orders of assessment on merits and in accordance with law, within a period of six weeks thereafter ;

(c) This Court is not expressing any view on merits of the matter as it is for the assessing officer to decide on merits and in accordance with law ;

7. W.P.No.28166 of 2019 : The challenge made in this writ petition is consequential demand notice. Since this Court set aside the orders of assessment challenged in W.P.Nos.28150, 28155 and 28162 of 2019, the consequential demand notice is also set aside. Needless to say that it is open to the assessing officer to issue fresh notice, after completion of assessment, as directed supra in other writ petitions.

8. Accordingly, all the writ petitions are allowed in the above terms. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (Insp cell)

/true copy/

Sub Asst. Registrar

rgr
To

1.The Assistant Commissioner (ST)
Saidapet Assessment Circle,
C.T. Annexure Building, 5th Floor,
No.1, Greams Road,
Chennai – 600 006.

2.The Commercial Tax Officer,
Pudukottai-I Assessment Circle,
Pudukottai.

+4 cc to Mr.V.Sundareswaran Advocate sr91606
+1 cc to the Special Government Pleader(T)
High Court Madras sr92149
W.P.Nos.28150, 28155, 28162 and 28166 of 2019

aa04/12/2019