IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.32062 & 32065 of 2019
and
W.M.P.Nos.32318, 32321 & 32322 of 2019

M/s.Shri Kamakoti Agencies
Represented by its Prop. R.Janakiammal
No.578/579, Gandhi Road,
Panruti - 607 106. ...Petitioner in both W.P.s

vs.

The Assistant Commissioner (ST)
Panruti Town Assessment Circle
Panruti. ...Respondent in both W.P.s

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in his proceedings in TIN:33344480286/2008-2009, quash the orders dated 01.02.2019 and 18.03.2019 passed therein.

For Petitioner in both W.P.s : Mr.P.V.Sudakar

For Respondent in both W.P.s : Mr.M.Hariharan
Additional Government Pleader

C O M M O N O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, the main writ petitions are taken up for final disposal at the admission stage itself.

2. W.P.No.32062 of 2019 is filed challenging the order of assessment dated 01.02.2019 relevant to the assessment year 2008-2009. W.P.No.32065 of 2019 is filed challenging the order dated 18.03.2019, rejecting the rectification petition filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006.

3. The petitioner earlier filed writ petitions in W.P.Nos.13589 to 13591 of 2016 challenging the orders of assessment relevant to the assessment years 2008-2009, 2009-2010 and 2010-2011 dated 07.10.2015, 29.07.2015 and 30.06.2015. Those writ petitions were disposed of on

12.04.2016 by passing a common order. The writ Court found that the Assessing Officer had passed the above orders of assessment without considering the monthly returns submitted by the petitioner. Accordingly, the writ Court set aside the said assessment orders and remitted the matter back to the Assessing Officer to decide the matter afresh after considering the monthly returns submitted by the petitioner and after affording due opportunity of personal hearing to them. Thereafter, the Assessing Officer through notices dated 17.01.2018 and 30.05.2018, called upon the petitioner to furnish certain documents and also to attend personal hearing on 20.06.2018. The petitioner seems to have filed objections dated 23.07.2018, objecting to the above said two notices issued by the Assessing Officer calling for certain documents. According to the petitioner, the Assessing Officer ought to have considered the returns already filed and decided the matter without seeking for further documents. The Assessing Officer, thereafter, passed an order of assessment dated 01.02.2019. The petitioner filed a rectification petition on 08.03.2019 under Section 84 of the Tamil Nadu Value Added Tax Act, by contending that the reply/objections filed by the petitioner dated 23.07.2018 was not at all taken into consideration by the Assessing Officer while passing the order of assessment. The said rectification petition was rejected by an order dated 18.03.2019, wherein the Assessing Officer has considered the objections raised by the petitioner dated 23.07.2018. Now, the petitioner has come before this Court mainly by contending that the impugned order was passed in violation of principles of natural justice, as the petitioner was not given an opportunity of personal hearing. It is also contended that while passing the order of assessment, the Assessing Officer has not at all considered the objections raised by the petitioner dated 23.07.2018.

4. Perusal of the materials placed before this Court would indicate that the above contentions raised by the petitioner are liable to be rejected for the following reasons. First of all, it is to be noted that when this Court, earlier remanded the matter to the Assessing Officer for reconsidering the matter afresh, based on the returns submitted by the assessee, did not specifically direct the Assessing Officer to proceed to pass the order of assessment without seeking for any further documents. Therefore, I do not think that the action of the Assessing Officer in seeking for certain documents for completing the assessment can be faulted. The petitioner, instead of filing those documents, has chosen to file objections on 23.07.2018. It is true that the said objections filed by the petitioner was not considered by the Assessing Officer in the order of assessment dated 01.02.2019. However, when the petitioner filed the rectification petition under Section 84 of the TNVAT Act, the Assessing Officer has chosen to consider the said objections as well and rejected the petition filed under Section 84 of the TNVAT Act. Therefore, proper course of action available

to the petitioner is to challenge impugned orders only before the next fact finding authority viz., the Appellate/Revisional Authority by filing regular appeal/revision. Instead of doing so, filing the present writ petitions is not a proper course of action. Needless to say that all the contentions raised by the petitioner can be raised before the Appellate/Revisional Authority, which in turn shall consider the appeal/revision and pass orders on the same on merits and in accordance with law, as this Court is not expressing any view on the merits of the contentions raised by the parties.

5. Accordingly, these Writ Petitions are disposed of, only by granting liberty to the petitioner to file appeal/revision against the impugned orders by complying with other statutory requirements, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such appeal/revision, the concerned Authority shall consider the same and pass orders on merits and in accordance with law, without reference to the period of limitation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST)
Panruti Town Assessment Circle
Panruti.

Copy TO

The Section Officer,
E.R. Section, High Court,
Madras.(Original impugned order Returned forthwith)

+2cc to Mr.P.V.Sudakar, Advocate, S.R.No. 94554

W.P.Nos.32062 & 32065 of 2019

NR(CO)
GN(18/12/2019)