

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Rev.Appl. No.112 of 2019
and CMP.Nos. 17966 & 17969 of 2019
in W.A.No.652 of 2019

M/s. Shintec Engineering India Pvt. Ltd.,
represented by its Authorised Signatory,
No.156, AVN Complex,
Poonamallee High Road,
Vanagaram, Chennai – 600 095. .. Review Appellant

Vs.

The Assistant Commissioner (ST)
JJ Nagar Assessment Circle,
Thirumangalam, Chennai – 600 040. .. Respondents

* * *

Prayer : Review Application No.112 of 2019 filed under Order 47 Rule 1 read with Section 114 of C.P.C. seeking to review the judgment in dated 28.02.2019 made in W.A.No.652 of 2019 passed by the Division Bench of this court.

Prayer in W.A.No.652 of 2019: Writ Appeal filed under clause 15 of the Letter Patent Against the order dated 20.12.2018 made in W.P.No.33973 of 2018.

Prayer in W.P.No.33973 of 2018: Writ Petition filed under Article 226 of the constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent vide his order of Assessment in TIN 33611350966/2014-15 dated 13.11.2018 and quash the same as illegal unconstitutional for having been passed in

violation of principles of natural justice and further direct the respondent to pass fresh orders in accordance with law after granting an opportunity of personal hearing to the petitioner.

For Applicant : Mr.Adithiya Reddy
for Mr. R. Ganesh Kanna
For Respondent : Mr.Mohammed Shaffiq
Special Govt. Pleader

ORDER

[Order of the Court was delivered by T.S.Sivagnanam, J.]

Heard Mr.Adithiya Reddy, learned counsel representing Mr.R.Ganesh Kanna, learned counsel for the applicant and Mr.Mohammed Shaffiq, learned Special Government Pleader for the respondent.

2. This review application has been filed to review the judgment and order in Writ appeals Nos. 652 to 655 of 2019 dated 28.02.2019. The said appeals were filed by the petitioner/assessee challenging the common order dated 20.12.2018 passed in W.P.Nos. 33969, 33970, 33973 and 33974 of 2018. Those writ petitions have been filed by the petitioner challenging the assessment orders under the provisions of the Tamil Nadu Value Added Tax, 2006 (for brevity, 'the Act') for the Assessment Years 2011-2012, 2012-2013, 2014-2015 and 2015-2016. The prayer sought for in the writ petitions was

to quash the Assessment Order as illegal and unconstitutional for having been passed in violation of the principles of natural justice and further direct the respondent to pass fresh orders in accordance with law after granting an opportunity of personal hearing to the petitioner.

3. The learned Single Judge disposed of the writ petitions on the ground that the petitioner has to avail an Statutory appellate remedy before the concerned Appellate Authority after complying with all other requirements for maintaining such appeal. The reason for coming to such a conclusion is on the ground that the Assessing Officer has given the opportunity of personal hearing to the petitioner only after receipt of their objections and second reply to the final notice dated 17.10.2018 appearing to be the reproduction of the very same reply dated 14.06.2016 and therefore, there is no point in saying that the petitioner should have been given an opportunity of personal hearing in pursuant to the second reply, especially when the petitioner failed to utilise the opportunity given through the notice dated 17.10.2018. Therefore, the learned Writ Court opined that there has been sufficient compliance of principles of natural justice.

4. Aggrieved by such order passed in the writ petitions, the petitioner preferred writ appeal in W.A.Nos. 652 to 656 of 2019. We heard the appeal and found that there is no error in the order passed by the learned Writ Court directing the petitioner to file an appeal before the Statutory Appellate Authority. We were guided by the fact that the petitioner though received the revision notices dated 18.01.2016, they did not submit their reply within the time stipulated i.e., 15 days, but submitted the reply only on 14.06.2016 and even thereafter, several opportunities were given and a personal hearing was fixed on 29.10.2018, the notice of such personal hearing having been received by the petitioner on 25.10.2018. Thus, we concurred with the view expressed by the learned Single Judge and confirmed the order passed in W.P.Nos. 33969, 33970, 33973, 33974 of 2018 dated 20.12.2018. The petitioner is before us by way of this review application seeking review of our judgment dated 28.02.2019.

5. After elaborately hearing the leaned counsel appearing for the applicant and the learned Special Government Pleader, we find that on account of the fact that the petitioner did not place certain facts

before this Court, this Court, while considering the writ appeals held that there has been no violation of principles of natural justice and accordingly confirmed the order passed in the writ petitions. However, after elaborately hearing the learned counsel today, we find that certain important factual details were not placed before us when the writ appeals were heard. Though the petitioner is to be blamed for such an act, nevertheless the Court has to take into consideration the facts, which are undisputed and then take a decision and merely because there was a default committed by the petitioner, the Court cannot refuse to exercise the review jurisdiction especially when those undisputed facts will turn the dimension of the case. We are inclined to exercise of our review jurisdiction for the following reasons:

(i) The revision notice for all the four Assessment Years were issued to the petitioner by the Assessing Officer on 18.01.2016. The petitioner submitted their reply after nearly 6 months i.e., on 14.06.2019. In fact, this delay in submitting their reply is what weighed in our mind when we dismissed the writ appeals by judgment dated 28.02.2019. It is seen from the records placed before this Court that after receipt of the revision notice dated 18.01.2016, the

petitioner submitted a representation on 28.03.2016 and from the copy of the said representation, we find that it has been received by the Department on 29.03.2016. In the said communication, the petitioner sought for 15 days time to produce the documents and other related records. Subsequently, by another representation dated 20.05.2016, the petitioner stated that the Director is not in Station and required atleast one month time to produce documents and other related records. The Assessing Officer has acknowledged the said letter on 20.05.2016 and extended the time to submit their reply up to 15.06.2016. On 14.06.2016, the petitioner has submitted their reply. Thus, this fact would go to show that the Department has extended the time up to 1 month and well within the said time, the petitioner has submitted their reply. Therefore, the petitioner cannot be faulted and stated to have been lethargic in not submitting their reply within the time fixed. The second aspect we need to take note of is that though the reply was received on 14.06.2016, the Assessing Officer did not complete the Assessment, but kept the matter pending for merely two years and final notice dated 17.10.2018 was issued. This notice was served on the petitioner on 25.10.2018 as admitted in

paragraph 4 of the Assessment Order. The notice dated 17.10.2018 granted 15 days time to submit their reply and simultaneously fixed the personal hearing on 29.10.2018, which according to the learned counsel for petitioner could not have been done because this Court has repeatedly held that the opportunity of personal hearing should be afforded after the Assessing Officer received their reply/objections of the dealer. The petitioner was of the opinion that he has 15 days time and therefore on 12.11.2018, the petitioner submitted their reply to the final notice dated 17.10.2018 and also sought for personal hearing. In the said reply, the petitioner had pointed out as to why there is a difference in the sales turnover reported in the monthly returns and the turnover as per the books of accounts. This has been explained by the petitioner by contending that the difference consists of purely labour charges. It is the submission of the learned counsel for the petitioner that this is a vital issue because substantial part of the demand is on account of these differences. As mentioned earlier, the petitioner requested for an opportunity of personal hearing in their reply dated 12.11.2018. However, the Assessing Officer on 13.11.2018 has passed the Assessment Order.

(ii) On a cursory perusal of the Assessment Order, it appears to be a well reasoned order because the order is a 17 pages order, however, on a closure scrutiny, we find upto page 15, the impugned Assessment Order is verbatim reproduction of the original notice dated 18.01.2016, the reply of the petitioner dated 14.06.2016 and final notice dated 17.10.2018 and remarks of the Inspecting Officer. Further, there is a passing reference to the petitioner's objection dated 12.11.2018 and the same is brushed aside stating that it is a reproduction of the earlier objection dated 14.06.2016. However, the fact remains that it is not so because the petitioner in the latest reply dated 14.06.2016 has sought for a personal hearing to explain the difference in the sales turnover reported in the monthly returns and the turnover as per books of account which is the substantial part of the turnover, which is sought to be revised. Therefore, if the Assessing Officer had brought on record the petitioner's objections dated 12.11.2018, an opportunity of personal hearing should have been granted and the Authority could not have passed the Assessment Order dated 13.11.2018. Thus, in the considered view of this Court,

the judgment passed by us dated 28.02.2019 in W.A.Nos. 652 to 655 of 2019 calls for review.

6. Accordingly this Review Application is allowed, the judgment in W.A.Nos. 652 to 655 of 2019 is recalled and the order in W.P.Nos. 33969, 33970, 33973, 33974 of 2018 is set aside with a direction to the petitioner to treat the Assessment Orders dated 13.11.2018 as a show cause notices and submit their comprehensive objection/s within 15 days from the date of receipt of a copy of this order. On receipt of the objection/s, the Assessing Officer shall fix a specific date for personal hearing, on which date, the authorised representative of the petitioner shall appear before the Assessing Officer and produce documents in support of their stand and on production of such documents and after considering the objection given by the petitioner dated 14.06.2016 and 12.11.2018 and the further objection to be given by the petitioner in terms of the above direction and taking note of the submission during the personal hearing, the Assessing Officer shall pass fresh Assessment Orders on merits and in accordance with law as expeditiously as possible,

preferably within a period of twelve (12) weeks from the date of conclusion of the personal hearing. Till assessment orders are passed in terms of the above direction, no coercive action shall be initiated against the petitioner.

7. Accordingly, this review application is allowed and the common judgment dated 28.02.2019 passed in W.A.Nos. 652 to 655 of 2019 is set aside and the common order passed in W.P.Nos.33969, 33970, 33973, 33974 of 2018 is set aside with the above further direction. No costs. Connected miscellaneous petitions are closed.

(T.S.S., J.) (V.B.S., J.)
06.02.2020

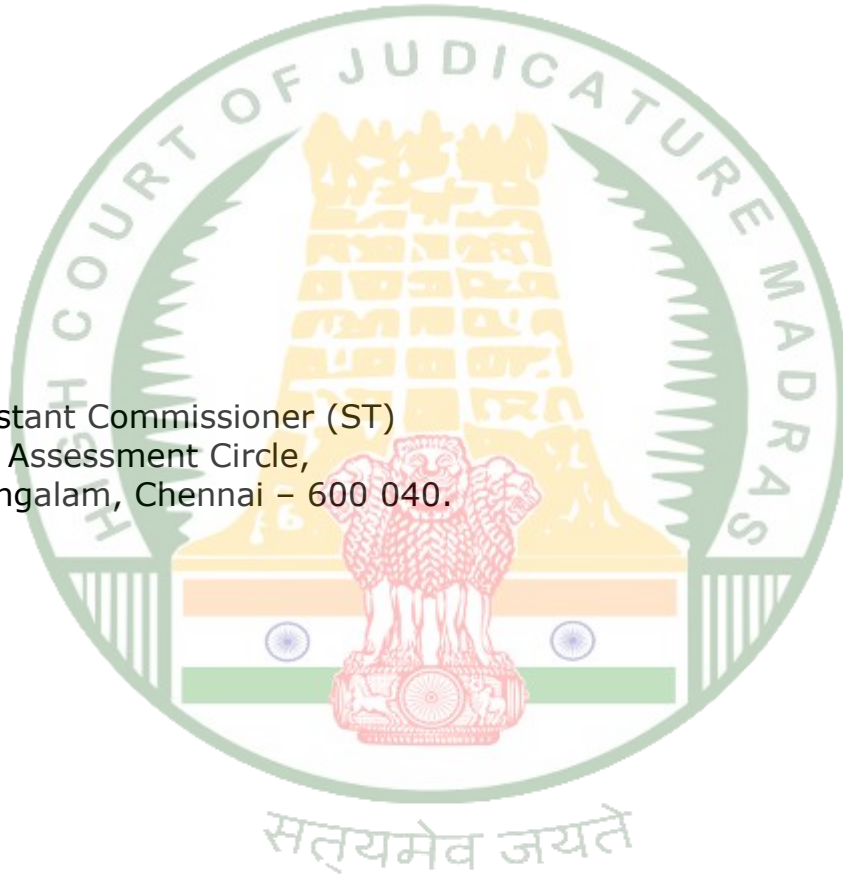
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To

The Assistant Commissioner (ST)
JJ Nagar Assessment Circle,
Thirumangalam, Chennai – 600 040.



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