IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P. Nos. 2007, 2013, 2020 & 2023 of 2019
&
W.M.P. Nos. 2267, 2268, 2271, 2272, 2273, 2275, 2277 & 2280 of 2019

M/s. Sridhar & Co,
rep. by its Proprietor U. Sridhar,
No.20-D, Bye pass Road,
Near Samiyar Madam,
Ambur – 635 802,
Vellore District. ..Petitioner in all the writ petitions

Vs.

The State Tax Officer,
Ambur Assessment Circle,
Ambur, Vellore District. ..Respondent in all the writ petitions

Prayer: Petitions under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in TIN Nos. 33754261568/2012-13, 33754261568/2014-15, 33754261568/2013-14 & 33754261568/2015-16 dated 19.11.2018, 04.12.2018, 04.12.2018 and 04.12.2018 respectively and to quash the same as illegal and contrary to the scheme of the Act.

For Petitioner in all the writ petitions :: Mr.S. Rajasekar

For Respondent in all the writ petitions :: Ms.Amirta Dinakaran, Govt. Counsel

COMMON ORDER

This common order will dispose of the captioned four writ petitions and writ miscellaneous petitions therein.

2. Mr.S. Rajasekar, learned counsel for writ petitioner in

all the four writ petitions is before this Virtual Court.

3. A perusal of the case file placed before this Court brings to light that the captioned writ petitions were filed more than 2 years and 8 months ago, to be precise on 18.01.2019, but have been in the Admission Board itself for over 2 ½ years now. Learned counsel for writ petitioner has taken as many as five adjournments in as many listings in this span of over 2 ½ years.

4. Learned counsel expresses regret for the repeated adjournments and submits that it was only because he was in poor health. Adjournment on the ground of poor health of a counsel is clearly unexceptionable and there can be no two ways about it,but, there are two counsel on record and the other counsel could have represented and in any event, alternate arrangements could have been made as it is a period of 2 years and 8 months.

5. This Court proceeds with this matter (after making the aforementioned observation) treating the captioned matter to one in the Admission Board.

6. The above mentioned observation shall not be taken as any remark about the learned counsel for writ petitioner, but it has been set out only for the limited purpose of ensuring that such scenarios do not recur and that such occurrences are avoided in the days to come.

7. Captioned four writ petitions are identical, the sole distinguishing feature being the assessment years only. Captioned writ petitions arise under 'Tamil Value Added Tax Act, 2006' (which shall herienafter be referred to as 'TNVAT Act' for the sake of brevity, convenience and clarity) and orders dated 19.11.2018, 04.12.2018, 04.12.2018 and 04.12.2018 bearing reference TIN No. 33754261568/2012-2013, TIN No. 33754261568/2014-2015, TIN No. 33754261568/2013-2014 & TIN No. 33754261568/2015-2016 respectively (hereinafter referred to as 'impugned orders' in plural, 'impugned order' in singular for the sake of convenience and clarity) have been called in question in the captioned aforesaid writ petitions. This Court is informed that impugned orders have been made under Section 27 of TNVAT Act post deemed assessment under Section 22(2) of TNVAT Act.

8. Notwithstanding very many averments in the writ affidavit and very many grounds, learned counsel submitted that the sheet anchor submission would be infraction of Narasus principle, i.e, the principle laid down by this Court in Narasus Roller Flour Mills V. Commercial Tax Officer (Enforcement Wing), Sankagiri reported in [2015] 81 VST 560 (Mad). Narasus principle is when

there is an assessment qua escaped turn over and wrong availment of input tax credit (ITC) under Section 27 of TNVAT Act (post deemed assessment under Section 22(2) of TNVAT Act), the Assessing Officer should independently apply his mind and should not be guided solely by proposal made by the Enforcement Authorities or by the revision proposed by the Enforcement Authorities.

9. Ms. Amirta Dinakaran, learned State Counsel, who is before this Virtual Court, accepts notice on behalf of the respondent in all the four writ petitions. With the consent of learned counsel on both sides, the main writ petitions were taken up and the same are now disposed of, as the writ petitions turn on a very acute legal curve and narrow compass.

10. A careful perusal of the impugned orders bring to light that the impugned orders, after setting out the deemed assessment under Section 22(2) of TNVAT Act, go to show that the business place of writ petitioner was inspected by Enforcement Officers on certain dates and they noticed certain defects. The defects noticed by Enforcement Officers have been adumbrated. After adumbration of defects noticed by the Enforcement Officers, the impugned order merely says that the turnover declared by the writ petitioner is incorrect and simply puts in place the proposed revision i.e, the revision proposed by the Enforcement Wing. Thereafter, the impugned order also makes an equal time addition by way of penalty under Section 27(3) of TNVAT Act.

11. Learned counsel for writ petitioner pointed out that in response to the opportunity given to writ petitioner, prior to the impugned orders, the writ petitioner had requested for a personal hearing for two purposes i.e,

(a) to explain the details and
(b) to produce documents in support of their claim.

12. Learned counsel for writ petitioner submitted that if a personal hearing had been granted, the writ petitioner would have been able to produce documents in support of their claim, but, this Court does not propose to go into that aspect of the order as personal hearing is not statutorily imperative for proceedings under Section 27 of TNVAT Act. This Court held so in State Bank of India Officers' Association(CC) - SBIOA V. Assistant Commissioner (ST), Muthialpet Assessment Circle, No.199, 2nd Floor, Thambu Chetty Street, Chennai, in W.P. No. 22634 of 2019 and the same was confirmed by a Honourable Division Bench vide judgment dated 06.12.2019 in W.A. No. 4073 of 2019.

13. However, the argument predicated on infraction of Narasus principle does weigh with this Court as perusal of impugned orders make it clear that the respondent has merely gone by the revised proposal suggested by the Enforcement Wing without independently analyzing the material before it.

14. Before this Court proceeds to set out the operative portion of this order, it is necessary to make it clear that the question as to whether the Assessing Officer should give an opportunity to produce supporting documents, is at the discretion of the respondent. The following order is passed:

(a) The impugned orders dated 19.11.2018, 04.12.2018, 04.12.2018 and 04.12.2018 bearing reference TIN No. 33754261568/2012-2013, TIN No. 33754261568/2014-2015, TIN No. 33754261568/2013-2014 & TIN No. 33754261568/2015-2016 respectively are set aside.

(b) The impugned orders are set aside solely for the prupose of enabling the respondent to redo the revisional assessment by following Narasus principle i.e, independent application of mind by the respondent qua the proposal given by the Enforcement Wing, in other words, without blindly and mechanically accepting the revised proposal made by the Enforcement Wing.

(c) Before redoing the assessment, it is open to the respondent to call for documents in support of writ petitioner's request in response to the pre-revisional assessment notice.

(d) Respondent shall do this denovo exercise in accordance with the directives adumbrated in Circular No.3/2019 Q1/39643/2018 issued by the Additional Chief Secretary/Commissioner of State Tax, Office of the Commissioner of State Tax, Chepauk, Chennai - 5 dated 18.01.2019 and Narasus principle (already alluded to) laid down by this Court in [2015] 81 VST 560 (Mad).

(e) The aforementioned denovo exercise shall be commenced forthwith and completed by the respondent as expeditiously as business of his office would permit and in any event, within eight weeks from today, i.e, on or before 27.10.2021.

(f) Revised assessment orders shall be served on the writ petitioner under due acknowledgement by the respondent.

15. Captioned writ petitions are disposed of with the aforesaid directives. Consequently, writ miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The State Tax Officer,
Ambur Assessment Circle,
Ambur, Vellore District.

+1cc to the Special Government Pleader Taxes, S.R.No.44652

W.P. Nos. 2007, 2013, 2020 &
2023 of 2019

MG(CO)
RGA(30/09/2021)