IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M. SUNDAR

W.P. No. 1971 of 2019
and
W.M.P.No. 2193 of 2019

M.Elangovan ...Petitioner

Vs

1.The Chief Secretary,
Union Territory of Puducherry,
Puducherry.

2.The Finance Secretary,
Union Territory of Puducherry,
Puducherry.

3.The Commissioner,
Commercial Taxes Department,
Government of Puducherry,
Puducherry.

4.The Assistant Commercial Tax Officer(SD),
Commercial Taxes Department,
Government of Puducherry, Karaikal,
Puducherry.

5.The Chief Engineer,
Public Works Department,
Puducherry.

6.The Executive Engineer (Planning),
Central Office,
Public Works Department,
Government of Puducherry,
Puducherry.

7.The Executive Engineer,
Building and Roads Division,
Public Works Department,
Karaikal,
Puducherry. ...Respondents

Prayer : Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for records relating to the notice in No. 01/CTO-KKL/2018-19/38, Karaikal dated 09.01.2019 on the file of the fourth Respondent and quash the same.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr. J. Kumaran
Additional Government Pleader
(Puducherry)

O R D E R

Mr. S. Doraisamy, learned counsel for the writ petitioner and Mr. J. Kumaran, learned Additional Government Pleader (Puducherry) on behalf of all the seven respondents are before this Virtual Court.

2. The captioned main writ petition is directed against an order dated 09.01.2019 bearing Reference No.01/CTO-KKL/2018-19/38, Karaikal made by the fourth respondent (hereinafter 'impugned order' for the sake of convenience and clarity).

3. The impugned order pertains to assessment years 2017-18 and 2018-19 and it is said to arise under 'Puducherry Goods and Services Tax Act, 2017' (hereinafter 'GST Act' for the sake of brevity, convenience and clarity).

4. The sheet anchor contention of learned counsel for writ petitioner is that the writ petitioner, who is a registered Works Contractor under GST Act and who is an assessee in the books of Karaikal Division, had raised an invoice prior to GST Act kicked in i.e, prior to Good and Services Tax regime or in other words, prior to 01.07.2017.

5. Before the impugned order was made by the fourth respondent, a show cause notice (SCN) dated 01.12.2018 bearing Reference No. 01/CTO-KKL/2018-19/765 was issued by the fourth respondent to the writ petitioner, inter alia, calling upon the writ petitioner to file his objections/explanation, in writing, in response to the SCN and also to appear in person.

6. The writ petitioner did not directly respond to the above SCN, but chose to write to the Executive Engineer of Public Works Department in Karaikal, by letter dated 14.12.2018 and a copy of the same was marked to the fourth respondent.

7. In the aforesaid factsetting/trajectory of events, the impugned order came to be made by the fourth respondent saying that the writ petitioner has not filed any

objections/explanation, in writing, in response to the SCN. Fourth respondent, vide the impugned order, has proceeded on the basis that the writ petitioner has sent a letter to the Executive Engineer of Public Works Department, Puducherry and therefore, objections/explanation, in writing, has not been sent in response to the SCN. To be noted, the SCN has been cited as No. 9 in the reference in the impugned order and the letter dated 14.12.2018 from the writ petitioner to the Public Works Department has been read as No.10 in the reference in the impugned order.

8. In the light of the narrow compass on which the entire matter now turns, this Court, with the consent of the learned counsel for both sides, i.e, learned counsel for the writ petitioner and the learned Additional Government Pleader for the respondents, took up the captioned main writ petition.

9. Learned Additional Government Pleader (Puducherry) submitted that there would have been no difficulty if the Writ Petitioner had directly responded to the SCN, instead of writing to the Executive Engineer of Public Works Department and marking a copy to the fourth respondent. However, the fact remains that the writ petitioner has responded qua SCN, as a copy of the letter dated 14.12.2018 written to the Executive Engineer, Public Works Department has been marked to the fourth respondent. To this extent, the impugned order, proceeding on the basis that the writ petitioner has not filed any objections/explanation may not be correct, more so, after noticing (citing as No.10 in Reference in the impugned order) the letter dated 14.12.2018 from the writ petitioner.

10. This Court is of the considered view that a quietus can be given to the writ petition by setting aside the impugned order and ensuring that an opportunity of hearing in person is given to the writ petitioner as the SCN vide paragraph 8 clearly mentions that the writ petitioner should appear in person and explain. In other words, without going into the question as to whether all the assessees would be entitled to a personal hearing, i.e., leaving that question open, in the case on hand, as the fourth respondent in the SCN has opted to give a personal hearing to the writ petitioner, it is only appropriate that the writ petitioner is heard in person.

11. In the light of the narrative thus far, the following consent order is passed:

(a) The impugned order, being order dated 09.01.2019, bearing Reference No.01/CTO-KKL/2018-19/38, made by the fourth respondent, is set aside.

(b) The impugned order is set aside solely for the purpose of facilitating consideration of writ petitioner's objections/explanation and giving a personal hearing to the writ petitioner which the fourth respondent has opted to give by his own volition vide SCN dated 01.12.2018.

(c) As a sequitur (though obvious) it is made clear that this Court has not expressed any opinion or view on the merits of the matter in this order. In other words, all questions including questions raised in captioned writ petition are left open, when fourth respondent embarks upon the denovo exercise.

(d) By consent, the personal hearing is fixed on 22.09.2021, Wednesday, in the afternoon at 3p.m. in the office of the fourth respondent, i.e, in the office of The Assistant Commercial Tax Officer(SD), Commercial Taxes Department, Government of Puducherry, Puducherry.

(e) The explanation dated 14.12.2018 already sent by the writ petitioner shall be treated as objection/explanation and personal hearing will be given on the basis of the objection/explanation.

(f) Post personal hearing on 22.09.2021, the fourth respondent shall pass orders afresh as expeditiously as his business would permit and in any event, within four weeks therefrom i.e, on or before 20.10.2021.

(g) The order passed afresh by the fourth respondent shall be communicated to the writ petitioner under due acknowledgement, within 7 working days from the date of the order.

12. The writ petition and the writ miscellaneous petition are disposed of with the aforementioned directives. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

nv/rgi

To

1.The Chief Secretary,
Union Territory of Puducherry,
Puducherry.

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Building and Roads Division,
Public Works Department,
Karaikal,
Puducherry.

+1cc to M/s.S.Doraisamy, Advocate SR.No.44332

+1cc to the Government Pleader, SR.No.44321

W.P.No. 1971 of 2019

KSM(CO)
RVM(17/09/2021)