IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.9956 of 2021
& WMP No.10567 of 2021

Mr.N.Parameswaran
Proprietor Advaith Consultancy
rep. By Power Agent Mr.P.Sivakumar …Petitioner

Vs.

The State Tax Officer,
TNVAT Commercial Tax Office,
Jawalikadai Veedhi,
Dharapuram Assessment Circle,
Dharapuram. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records on the file of the respondent in TIN:33563023419/2-16-17 dated 15.03.2021, quash the same.

For Petitioner : Mr.G.Surya Narayanan

For Respondent : Mr.ANR.Jayaprathap
Government Advocate

O R D E R

Mr.ANR.Jayaprathap, learned Government Advocate accepts notice for the respondent and is armed with instructions to proceed with the matter finally even at the stage of admission. Hence, by consent of both sides, this Writ Petition is taken up for final disposal even at this stage.

2. The petitioner challenges order of assessment dated 15.03.2021 for the period 2016-17 passed in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'). The Assessing Authority has proceeded on the basis that the entire contract value that is declared in the balance sheet for the relevant year ought to be brought to tax on the basis that the transaction is a works contract and has restricted the eligibility, by applying the formula, 30% : 70%, in this regard.

3. It is the contention of the petitioner that the contract is not a works contract and hence the formula would not be applicable in the present case.

4. Normally, the question as to whether the transaction would constitute a works contract or a regular contract is one that involves examination of facts and this Court, sitting under Article 226 of the Constitution of India, would not enter into such examination. However, in the present case there has been no personal hearing afforded to the petitioner, which is violation of principles of natural justice and also the statutory mandate under Section 27 of the Act to afford an effective hearing prior to finalisation of assessment.

5. In response to notice dated 27.05.2019 the petitioner had only sought some time to collect necessary records and produce the same. In fact, notice dated 27.05.2019 is itself not in a proper form insofaras the Assessing Authority extends an opportunity of personal hearing as well as filing of objections with documentary evidence within 15 days from date of receipt of the notice.

6. I have expressed a view in other matters that opportunity granted should be effective, to be fixed by date and time, since an open ended notice calling upon the petitioner to appear on any day within a range of days may not serve the purpose. An Officer is not expected and would not be at the seat all the time during the working hours in the range of days stipulated. Hence, notice dated 27.05.2019 itself leaves much to be decided.

7. Be that as it may, the petitioner has sought some time to respond. Thereafter, notice dated 25.02.2021 was issued, to which a written reply was filed enclosing documentary evidence. It was incumbent upon the Assessing Authority to hear the petitioner thereafter which has not been done.

8. Since no personal hearing has, admittedly, been afforded, the impugned order is set aside. The petitioner will appear before the Assessing Authority on Thursday, the 6th of May, 2021 at 10.30 a.m. along with all/any materials in support of its contention, without expecting any further notice in this regard. The petitioner shall be heard either over video conference or physically as may be mutually convenient to the parties, to be intimated to the petitioner sufficiently in advance. After hearing the petitioner and consideration of all/any materials that may be furnished, let orders of assessment be passed de novo within a period of four (4) weeks from date of first hearing.

9. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The State Tax Officer,TNVAT Commercial Tax Office,
Jawalikadai Veedhi, Dharapuram Assessment Circle,
Dharapuram.

+1cc to M/s.G.Suryanarayanan, Advocate SR.24929
+1cc to Special Government Pleader(Taxes) SR.25046

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JP-II(CO)

CB(18/06/2021)