IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.15347 & 15349 of 2021
and W.M.P.Nos.16234 & 16235 of 2021

Tvl.Sri Vari Gayathri Enterprises,
Narasimhalu
190/VI Roadstreet,
Melpakkam Village,
Arakkonam. .. Petitioner in both W.Ps.

Vs.

1.The State Tax Officer,
Arakkkonam.

2.Tvl.Susee Scooter Centre,
Plot No.177, Indira Nagar,
Kancheepuram 631 502.

3.Tvl Khivraj Automobiles Pvt Ltd.,
621 Model School Road, Anna Salai,
Nungambakkam, 600 006.

4.Tvl. Total Oil India Pvt Ltd.,
131/1A1B2A1A1,
Puzhuthivakkam Chitalamangalam Village,
Chengalpet District,
Madhuranthakam 603 303. ..Respondent in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Consitution of India, to issue a Writ of Certiorari calling for the impugned proceedings of the 1st respondent in TIN Nos.33354302140/2010-11 and 33354302140/2011-12, both dated 24.06.2021 and quash the same.

(In both W.Ps.)

For Petitioner : Mr.S.N.Kirubanandam
For Respondents: Mr.T.N.C.Kaushik (For R1)
Government Advocate (Tax)

COMMON ORDER

The notices issued, requesting the petitioner to file its objections, if any, in writing in supported documents, within a period of 15 days of the receipt of the notices are under challenge in the present Writ Petitions.

2.The learned counsel for the petitioner mainly contended that an opportunity is to be granted to the writ petitioner to defend their case. The respondents are proceeding to pass an assessment order hurriedly, without even granting opportunity to the petitioner to defend their case in a proper manner. The petitioner states that they have to scrutinize the records for the purpose of defending their case. It is contended that earlier, the writ petitioner filed W.P.Nos.1651 and 1652 of 2014 and this Court passed an order as under:

> "4.The learned Government Advocate on instructions submitted that sufficient time may be granted to the respondent to consider the rectification petition dated 30.12.2013.
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> 5.In the light of the above, without going into the merits of the petitioner's contention, there will be a direction to the respondent to consider the petitioner's application for rectification dated 30.12.2013 on merits and in accordance with law, after affording opportunity of personal hearing to the petitioner within a period of four weeks from the date of receipt of a copy of this order.
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> 6.The writ petitions are disposed of accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs."

3.It is contended that the directions issued by this Court has not been complied with and further, the respondents acted against the provisions of the Tamil Nadu Value Added Tax Act. The other grounds raised by the petitioner are related to the merits of the case. The Writ Petitions are filed challenging the notices. This Court is not inclined to adjudicate the merits which are to be done with reference to the documents and evidences, in original.

4.No writ against the show cause notice needs to be entertained in a routine manner. A writ against a show cause notice may be entertained only on exceptional circumstances, where the notice is issued by an authority who is incompetent or an allegation of malafides are raised. Even in case of raising an allegation of malafides, the authority against whom such an allegation is raised must be impleaded as party respondent in his personal capacity. Therefore, this Court is of the considered opinion that the grounds raised on merits are to be placed before the competent authority for adjudication.

5.The learned Government Counsel appearing on behalf of the 1st respondent filed Calender of action taken, which reads as under:

Date	Calender of action taken:
25.05.2016	Notice sent by RPAD
06.06.2016	Reply received from Sri Vari Gayathri Enterprises, Arakkonam requesting enquiry with the sellers and personal hearing.
22.11.2016	Fresh summons in Form-PP issued calling for all the records and documentary evidences. (Due to new incumbent in the post of State Tax Officer, Arakkonam) - Petitioner not turned up.
28.11.2017	Fresh summons in Form-PP issued calling for all the records and documentary evidences. (Due to new incumbent in the post of State Tax Officer, Arakkonam) - Petitioner not turned up.
09.06.2018	Cross check reference issued to cross verify the accounts of the seller to ensure the transactions. 1.Assistant Commissioner (ST), Kancheepuram. 2.Assistant Commissioner (ST), Nungambakkam, Chennai. 3.Assistant Commissioner (ST), Madurantagam.
28.09.2018	Reminder issued to Assistant Commissioner (ST), Kancheepuram, Nungambakkam and Madurantagam.
04.01.2019	Reminder issued to Assistant Commissioner (ST), Kancheepuram, Nungambakkam and Madurantagam.
21.02.2019	Reminder issued to Assistant Commissioner (ST), Kancheepuram, Nungambakkam and Madurantagam.
02.04.2019	Reminder issued to Assistant Commissioner (ST), Kancheepuram, Nungambakkam and Madurantagam.
24.05.2019	Reminder issued to Assistant Commissioner (ST), Kancheepuram, Nungambakkam and Madurantagam.

Date	Calender of action taken:
02.07.2019	Reply from Assistant Commissioner (ST), Madurantagam enclosing the copy of the sale bill issued to the purchaser. From August 2019 to January 2020, due to the new incumbent in the post of State Tax Officer, Arakkonam, awaiting reply to the cross check references, the issue was kept alone. In the meantime, due to the Corona Virus, further action from February 2020 to May 2021 was not perused.
24.06.2021	Finally a notice was issued on 24.06.2021.

6.The petitioner has stated that the petitioner filed W.P.Nos.1651 and 1652 of 2014 and this Court passed an order on 08.10.2014, thereafter, an opportunity was granted to the writ petitioner by the respondents and assessment orders were passed for the years 2010-11 and 2011-12 on 09.11.2015. This fact is stated in the affidavit filed in support of the present Writ Petition.

7.However, the petitioner has failed to state the subsequent Writ Petitions filed by the petitioner in W.P.Nos.15635 and 15636 of 2016, challenging the assessment orders passed by the competent authority on 09.11.2015, for the Assessment Years 2010-11 and 2011-12. Without even stating the fact regarding the above Writ Petitions filed by the petitioner challenging the orders of assessment, the present Writ Petitions are filed, challenging the notices issued pursuant to the orders passed by this Court dated 26.04.2016 in W.P.Nos.15635 and 15636 of 2016. Thus, the petitioner has clearly suppressed the vital information regarding the filing of two Writ Petitions on earlier occasions. When the petitioner has stated about the first Writ Petitions filed in W.P.Nos.1651 and 1652 of 2014, they have suppressed the Writ Petitions in W.P.Nos.15635 and 15636 of 2016. This Court passed an order on 26.04.2016, setting aside the assessment orders and remanded the matter back to the authority for fresh consideration. This Court has directed the petitioner to file their objections within a period of two weeks from the date of receipt of a copy of that order and thereafter, the Assessing Officer has to decide the matter afresh, on merits. Its contended that in obedience to the orders passed by this Court, notice was issued on 25.05.2016, calling for the objections. The subsequent events occurred are stated in the calender of action produced by the respondents as extracted in the aforementioned paragraphs. The process of assessment is yet to be completed. The writ petitioner, instead of submitting their objections and availing the opportunity for the purpose of defending their case, filed Writ Petitions, questioning the notices, which cannot be appreciated.

8.By filing Writ Petitions after Writ Petitions, the issues are prolonged and protracted. The impugned notices clearly state that the petitioner has to file its objections if any, to the proposals stated in the notices within a period of 15 days from the date of receipt of a copy of the notices. Further, an opportunity of personal hearing was also offered to the petitioner to appear before the authority on 08.07.2021, to represent the case with documentary evidence. The learned Government Counsel for the 1st respondent states that the petitioner or their authorized representative had not appeared. Thus, the petitioner has not availed the opportunity provided by the authority. Contrarily, they have filed the Writ Petitions after Writ Petitions, in order to prolong the issue by unjust means. Such a tactical method adopted by the litigants can never be encouraged by the High Court. After the order of assessment was set aside by this Court in W.P.Nos.15635 and 15636 of 2016 and a direction was given by this Court to provide an opportunity of personal hearing and the notices were issued providing a personal hearing to the writ petitioner to submit their documents and make oral arguments, the said notices are challenged in the present Writ Petition. Thus, the conduct of the writ petitioner would apparently establish that they are rather interested in prolonging the matter, instead of defending their case by availing the opportunities provided by the respondents. The petitioner has gone to the extent of suppressing the fact regarding filing of the Writ Petitions, challenging the assessment orders dated 09.11.2015 in W.P.Nos.15635 and 15636 of 2016. This being the factum established, it is left open to the petitioner to submit their defence statement along with the documents and the respondents are directed to give one more final opportunity of personal hearing to the writ petitioner and if the writ petitioner has failed to avail the opportunity, then the respondents are at liberty to proceed with the assessment and pass final orders, on merits and in accordance with law.

With these directions, both the Writ Petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The State Tax Officer,
Arakkkonam.

+1 CC to Mr.S.N.Kirubanandam, Advocate sr 36443.
+1 CC to The Special Government Pleader (T) Advocate sr 36694

W.P.Nos.15347 & 15349 of 2021

SPD(CO)
SP(18/08/2021)