IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.16469 of 2021 and
WMP.No.17437 of 2021

M/s.Swamy Engineering Company,
Represented by its Proprietor,
R.N.Alagumayilsaamy,
No.4-1-110, Sri Nagar,
Opp. R.C.Plant, Raman Nagar Post,
Mettur Dam – 636 403, Salem District. ...Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Mettur Assessment Circle,
Ramana Nagar Post, Mettur,
Salem District – 636 403. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari, to call for the records of the Respondent in TIN 33803243865/2016-17 dated 16.03.2021 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.TNC.Kaushik,
Government Advocate

O R D E R

Mr.TNC.Kaushik, learned Government Advocate accepts notice for the respondent and is armed with instructions to proceed with the matter finally. Thus by consent expressed by both learned counsel, final order is passed in this writ petition, even at the stage of admission.

2. The challenge is to an order of assessment under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the period of 2016-17. In respect of the pre-assessment notices, the petitioner filed its reply dated 15.03.2021. The issue in question relates to an addition in regard to the labour charges. The petitioners' case is that

there was a double entry in regard to the labour charges in the profit and loss accounts. Moreover, the labour charges have been offered to service tax and ought not to have been taken into consideration in the sales tax assessment.

3. Notwithstanding the explanation offered, the impugned order of assessment has come to be passed by the Officer simply stating that the explanation was not valid as the accounts would have been duly verified by the chartered accountant and any double additions would have been noticed and corrected at that stage. Moreover, he has proceeded to levy penalty, though there is no proposal for the levy of penalty in the pre-assessment proposals.

4. On instructions, Mr.TNC.Kaushik, learned Government Advocate would agree that there was no personal hearing offered to the petitioner prior to finalising the impugned assessment. It is also a fact that there has been no proposal for the levy of penalty prior to the levy in the assessment itself.

5. The procedure for assessment should commence with the issuance of a pre-assessment proposal crystallizing the issues that arise and calling upon petitioner to file objections. A personal hearing should be afforded after receipt of objections and an order of assessment passed thereafter. Since the proper procedure has, admittedly, not been followed in the present matter, the impugned order of assessment is set aside. The Assessing Authority will complete the assessment after hearing the petitioner within a period of eight (8) weeks from today.

6. This writ petition is allowed. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ska/rkp

To

The Assistant Commissioner (ST) (FAC),
Mettur Assessment Circle,
Ramana Nagar Post, Mettur,
Salem District - 636 403.

+1 CC to M/s.K.Soundararajan, Advocate, Sr.No. 39525.
+1 CC to The Special Government Pleader (Taxes), Sr.No. 38988.

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SRA(CO)
LS(26/08/2021)