IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.18442 of 2021
and
WMP.No.19661 of 2021

Sri Lakshmi Balaji Enterprises
Represented by Mr.V.Ashok,
Plot No.4/75, 12th Street,
Vidudhalai Nagar, Sunnambu Kolathur,
Kovilambakkam, Chennai-600 129.
... Petitioner

-Vs.-

The State Tax Officer,
Medavakkam Assessment Circle,
Chennai-600 100. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarifed Mandamus, calling for the records of the respondent pertaining to the impugned assessment order dated 27.09.2019 for the period April to June, 2017 and partially quash the same in so far it relates to the sale of Diesel Generator Set.

For Petitioner : Mr.S.Gurumoorthy

For Respondent : Ms.Amirta Dinakaran
Government Advocate

O R D E R

Captioned main writ petition has been filed assailing an 'order dated 27.09.2021 bearing reference CST/33096435845/2017-18' [hereinafter 'impugned order' for the sake of convenience and clarity].

2. Read this in conjunction with and in continuation of earlier proceedings made in the previous listings on 07.09.2021 and 21.09.2021, which read as follows:

'Proceedings dated 07.09.2021

Captioned writ petition and writ miscellaneous petitions are listed in the Admission Board.

2. Mr.S.Gurumoorthy, learned counsel on record for writ petitioner submits that an 'order dated 27.09.2019 pertaining to assessment upto June 2017 bearing reference No.CST/33096435845/2017-18' [hereinafter 'impugned order' for the sake of brevity, clarity and convenience] has been called in question in the captioned writ petition.

3. Notwithstanding very many points raised in the writ affidavit and grounds raised in the writ affidavit, learned counsel made focused submissions on two points and they are as follows:

(a) The assessment order has been made under Section 12 of 'the Tamil Nadu Value Added Tax Act, 2006, (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of convenience and clarity] and no personal hearing was given to the writ petitioner before the impugned order was made.

(b) The Authority for Clarification and Advance Ruling vide order dated 25.10.2016 bearing reference No.ACAAR No.77/2012-13 had clarified in paragraph No.7(ii) that generating sets are liable to tax at the reduced rate of 5% but this has not been applied.

4. Ms.Amirta Dinakaran, learned State counsel accepts notice on behalf of sole respondent and submissions of learned counsel are as follows:

(a) Learned counsel submits that the impugned order has not been made under Section 12 of TNVAT Act as contended, as it pertains to levy of purchase tax. Learned Revenue counsel submits that the impugned order has been made under Section 22(4) of TNVAT Act.

(b) Learned counsel submits that reasonable opportunity of being heard was given to writ petitioner vide a detailed notice dated 01.11.2018 which was duly served on dealer on 04.03.2019, after repeated reminders over phone owing to dealer not being available in the principle place of business, directing them to file their objections if any. Learned Revenue counsel submits that this is captured in the impugned order itself.

5. Learned counsel for writ petitioner submitted and asserted that the writ petitioner has not received the notice dated 01.11.2018. This according to learned counsel has been articulated in paragraph No.6 of the writ affidavit which reads as follows:

'6. I state further that no opportunity of personal hearing was granted to the petitioner prior to the passing of the impugned assessment order dated 27.09.2019, as can be seen from the order itself. I am advised to submit that the non-grant of an opportunity of personal hearing to the petitioner is violation of principles of natural justice. In fact the respondent has not issued any detailed notice as observed in the impugned order.'

6. To be noted, there is no specific mention in paragraph No.6 of the writ affidavit about 01.11.2018 notice, but there is a mention that detailed notice as observed in the impugned order has not been issued.

7. In the light of the above controversy, learned Revenue counsel to file an affidavit regarding 01.11.2018 notice and service of the same on dealer/writ petitioner together with supporting documents if any, with advance copies to learned counsel for writ petitioner.

8. List a fortnight hence under the cause list caption 'ADJOURNED ADMISSION'. List on 21.09.2021.
Proceedings dated 21.09.2021

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 07.09.2021.

2. Adverting to earlier proceedings, learned Revenue counsel submits that an affidavit has since been filed, but it is not before this Court. Learned counsel for the writ petitioner also submits that he has not been favoured with a copy.

Let the needful be done before the next listing. List on 01.10.2021.'

3. Aforementioned proceedings, more particularly proceedings dated 07.09.2021 captures the crux and gravamen of the matter.

4. Pursuant to earlier proceedings made in the previous listing on 21.09.2021, learned Revenue counsel has placed before this Court an affidavit dated 20.09.2021 and the deponent is the sole respondent.

5. Before this Court adverts to the aforementioned affidavit, it is necessary to record that this Court is informed that the impugned order has been made under Section 22(4) of 'the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of convenience and clarity]. There is no disputation or disagreement about this aspect of the matter. If an order is made under Section 22(4) of TNVAT Act, owing to the proviso thereat, it is statutorily imperative to give the dealer a reasonable opportunity of being heard. To be noted, this Court had the occasion to deal with the expression 'a reasonable opportunity of being heard' occurring in this proviso and the expression 'a reasonable opportunity to show cause' occurring in the common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act in State Bank of India officers case law [State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commisioner, Chennai-1] vide order dated 01.08.2019 in W.P.No.22634 of 2019 and held that for assessment under Section 27 of TNVAT Act, personal hearing is not statutorily imperative, it will suffice if 'a reasonable opportunity to show cause' is given under Section 22(4). To be noted, State Bank India Officers case was carried in appeal by way of an intra-court appeal vide W.A.No.4073 of 2019 and a Hon'ble Division Bench of this Court dismissed the writ appeal vide order dated 16.12.2019. Therefore, for 22(4) proceedings personal hearing is statutorily imperative owing to the proviso.

6. Aforementioned affidavit of the respondent dated 20.09.2021 reads as follows:

IN THE COURT OF JUDICATURE AT MADRAS

(SPECIAL ORIGINAL JURISDICTION)

(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

W.P.No.18442 of 2021

Tvl. Sri Laxmi Balaji Enterprises,
Represented by Mr. V.Ashok,
Plot No. 4/75, 12th Street,
Vidudhalai Nagar, Sunnambu Kolathur,
Kovilambakkam, Chennai 600 129. ..... Petitioner

-- Vs --

The State Tax Officer,
Medavakkam Assessment Circle,
I.E.C.T. & R.D. Buildings, (South Tower),
Room No. 232, II Floor, Nandanam,
Chennai 600 035. ..... Respondent

AFFIDAVIT FILED BY THE RESPONDENT FOR IMPUGNED ORDER

I, N. Thirumal Murugan, S/o S.Narayanan, Hindu, aged about 48 years, working as State Tax Officer, in the office of the Assistant Commissioner (ST), Medavakkam Assessment Circle, Chennai 600 035, do hereby solemnly affirm and sincerely state as follows:

1. I am working as State Tax Officer, Medavakkam Assessment Circle and I am fully acquainted with the facts of the case from records. I am filing this affidavit on behalf of the Respondent herein on the basis of the records.

2. I respectfully submit that W.P. No. 18442 of 2021 filed by the Petitioner against the assessment orders passed in CST/33096435845/2017-18 (Upto June'17) dated 27.09.2019, the contention of the petitioner that they were not granted personal hearing is not acceptable since a notice was issued to them on 01.11.2018. The same has been served in person also on 04.03.2019 after repeated reminders over phone since the dealer were not available in the principal place of business for which they had filed reply on 04.03.2019 along with another declaration which turnover was not at all reported in the returns filed. Hence, final orders were issued to the petitioners. The order was passed on 27.09.2019, under Section 22(4) of TNVAT Act, 2006 read with Sec.9(2) of the CST Act, 1956.

20/09/2021
State Tax Officer
Medavakkam Assessment Circle
Nandanam, Chennai-600 035.

Solemnly affirmed at Chennai
On this the 20th day of September 2021
and signed his name in my presence.

Before me

7. Aforementioned affidavit does not help the case of the respondent as obviously no personal hearing has been granted to the writ petitioner.

8. In the instant case, on the short point of personal hearing not being granted, impugned order is set aside and the matter is sent back to the respondent for doing the matter de novo. The following order is passed:

a) Impugned order being order dated 27.09.2021 bearing reference CST/33096435845/2017-18 is set aside solely on the ground that personal hearing has not been given to the writ petitioner-dealer, which is statutorily imperative under the proviso to Section 22(4) of TNVAT Act;

b) As a corollary to the previous limb, though obvious it is made clear that this Court has not expressed any view or opinion on the merits of the matter;

c) By consent of both sides, personal hearing is now fixed on 11.11.2021 (Thursday) at 3.00 p.m and the venue shall be the office of sole respondent;

d) Sole respondent shall do the legal drill under 22 (4) de novo and complete the same as expeditiously as his business would permit and in any event within six (6) weeks from the date of personal hearing i.e., on or before 23.12.2021.

9. Captioned writ petition is disposed of with the above directives. Consequently, captioned WMP is also disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

kmi

To

The State Tax Officer,
Medavakkam Assessment Circle,
Chennai-600 100.

+1cc to MrS.Sivakumar, Advocate SR.No.55918

+1cc to Special Government Pleader SR.No.56371

W.P.No.18442 of 2021
and
WMP.No.19661 of 2021

NRJK(CO)
GMY(02/11/2021)