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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.09.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.18582 of 2021

&

W.M.P.Nos.19821 &19822 of 2021

Ayyanar Steel Trading
Rep. By its Partner
N.Ellappan
No.15/1, State Bank Officers Colony
2nd Cross Bangalore Bye Pass Road
Salem - 636 004

...Petitioner

Vs.

1. State Tax Officer (Intelligence)
Legal and Revision - I Salem
Commercial Taxes Building
Pitchards Road, Salem - 636 007
2. Deputy Commissioner (ST) GST
Salem and Erode
Commercial Taxes Building
Pitchards Road, Salem - 636 007

... Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records of the case and quash the impugned order passed in Reference No.007/2019 in GSTIN/ID 33ABGFA9345R1ZU dated 18.10.2019 by the first respondent and further direct the first respondent to re-do the assessment after granting personal hearing to the petitioner.

For Petitioner	:	Mr. N.Murali
For Respondents	:	Ms. Amirta Dinakaran Government Advocate

ORDER

Captioned writ petition turns on a very short point notwithstanding very many averments and grounds raised in the writ affidavit and this is owing to what unfurled in the virtual hearing today. Therefore, with the consent of both sides i.e.,



Mr.N. Murali, learned counsel for writ petitioner and Ms. Amirta Dinakaran, learned State counsel, who accepted notice on behalf of both the respondents, the main writ petition is taken up.

2. An 'order dated 18.10.2019 bearing reference No.007/2019 in GSTIN/ID 33ABGFA9345R1ZU made by the first respondent' (hereinafter 'impugned order' for the sake of convenience and clarity) has been called in question in the captioned writ petition.

3. Interestingly and intriguingly, the order says 'see rule 142(1)' and it says that it is assessment proceedings under Section 73(1), but it does not give the title of the Rules or the Statute. However, to be noted, the appeal provision has been mentioned and the appeal provision i.e., 107(1) refers to the Statute, namely TN Goods & ST Act, 2017. A scanned reproduction of the first page of the impugned order is as follows:

Present: Thiru. S.Ethiraj
(Sec rule 142(1))

Reference No. : 007/2019 Date: 18.10.2019

To _____

GSTIN/ID	: 33ABGFA9345R1ZU
Name	: Ayyappa Sack Trading
Address	: 123, Park Road, Office Colony, 1 st cross, Bangalore Bangalore, 560006
Tax period	: October 2018
Factual facts	: 2018-2019
Act	: TN GST Act 2017
Section / Rule / Section Which SCN is being issued	: 73(1)
SCN Reference No.	: 007/2019-20
Date	: 18.10.2019

1. Notice reference No.007/2019-20 and DRC-01 dated 30.09.2019
(Assessment proceedings under section 73)

Appeal: An appeal against this order lies before the Appellate Authority under section 107(1) of Tamil Nadu GST Act-2017.

Order

You are a registered taxable person in the books of Assistant Commissioner (ST), Alagiyarantam district having principal business at the above said address. The goods dealt in your business are bars, rods and cement.



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4. This Court is constrained to observe that Assessing Officers should necessarily mention not only the provisions, but also the Statutes and Rules under which orders are made, as this by itself can douse several contentions / issues that can be raised in challenges to the orders besides throwing clarity and giving specificity (to put it in legal proceedings perspective).

5. Be that as it may, learned Revenue counsel submits that Rule 142(1) is a reference to 'Tamil Nadu Goods and Services Tax Rules, 2017' [hereinafter 'TN Goods & ST Rules' for the sake of brevity] and Section 73 is a reference to Section 73 of 'Tamil Nadu Goods & Services Act, 2017' [hereinafter 'TN Goods & ST Act' for the sake of brevity].

6. As already alluded to supra, notwithstanding very many clauses in the writ affidavit and notwithstanding very many grounds in the writ affidavit, learned counsel for writ petitioner made one pointed submission and that lone pointed submission is, the writ petitioner has not been given an opportunity of hearing before the impugned order was made. Elaborating further, learned counsel for writ petitioner submits that Section 75 of TN Goods and ST Act, which deals with general provisions relating to determination of tax and more particularly sub-section (4) thereat, mandates that an opportunity of hearing should be granted in cases of this nature.

7. In response to the aforementioned lone point which is urged, learned Revenue counsel, on instructions, submitted that the question of giving an opportunity of hearing will arise only when a request in writing is made by the person chargeable with tax and in this case, such a request has not been made.

8. This Court deems it appropriate to extract and reproduce Section 75(4) of TN Goods and ST Act:

'Section 75 - General Provisions relating to determination of tax-

(1).....

(2).....

(3).....

(4)An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.'

9. There is no disputation or disagreement that Section 75 of TN Goods and ST Act applies to assessment proceedings under Section 73 of TN Goods and ST Act.



10. A plain, but careful reading of the sub-section (4) of Section 75 and the language in which it is couched, makes it clear that opportunity of hearing to the person chargeable with tax is statutorily imperative not only when such person makes a specific request in writing, but also when an adverse decision is contemplated against such person and these two situations are put together in sub-section (4) by connecting the two by 'or'. In other words, these two are not conjunctive and they have not been put together by using the conjunction 'and'.

11. Therefore, it follows as a sequitur that in cases where an adverse decision is contemplated, it is statutorily imperative to give an opportunity of hearing under Section 75(4) of TN Goods and ST Act. A perusal of the impugned order in the case on hand makes it clear that it is adverse to the writ petitioner as it proceeds on the basis that writ petitioner has suppressed transactions and more importantly, penalty has also been levied. Therefore, the argument that the opportunity of hearing was not given as the writ petitioner, who is the person chargeable with tax, has not chosen to make a written request, does not hold water. For the purpose of clarity, this Court deems it appropriate to set out that the impugned order is an adverse decision qua writ petitioner and therefore, an opportunity ought to have been given to the writ petitioner, even if the writ petitioner has not asked for a personal hearing in writing.

12. In the light of the narrative discussion and the dispositive reasoning thus far, the following order is passed:

a) Impugned order dated 18.10.2019 bearing reference No.007/2019 in GSTIN/ID 33ABGFA9345R1ZU made by the first respondent is set aside solely on the ground that there is a breach of sub-section (4) of Section 75 of TN Goods and ST Act;

b) As a sequitur to the previous limb, it is made clear that no opinion or view is expressed on the merits of the matter in this order;

c) First respondent shall do the exercise de novo i.e., redo the exercise by adhering to sub-section (4) of Section 75 of TN Goods and ST Act i.e., giving an opportunity of hearing to the writ petitioner and complete the exercise as expeditiously as his business would permit and in any event within eight weeks from today i.e., on or before 09.11.2021;

d) By consent of both sides, the personal hearing is fixed on 15.09.2021 at 03.00 pm in the office of the first respondent;

e) The de novo order made shall be served on the writ petitioner within seven working days from the date of the order under due acknowledgement.



Captioned writ petition is disposed of with the above directives. Consequently, connected writ miscellaneous petitions are disposed of as closed. There shall be no order as to costs.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gpa

To

1. State Tax Officer (Intelligence)
Legal and Revision - I Salem
Commercial Taxes Building
Pitchards Road, Salem - 636 007
2. Deputy Commissioner (ST) GST
Salem and Erode
Commercial Taxes Building
Pitchards Road, Salem - 636 007

+1CC to Mr.N.Murali, Advocate, Sr.No.44985

+1CC to Government Pleader (Taxes), Sr.No.45277

W.P.No.18582 of 2021 &
W.M.P.Nos.19821 &19822 of 2021

SSD (CO)
K.RK. (20.09.2021)