IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.09.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.20305 OF 2021
&
W.M.P.NO.21560 OF 2021

M/s.Sangeetha Mobiles Pvt. Ltd.,
Rep. by its Senior Manager Mr.Narendra Babu,
No.56, 2nd Avenue, Ashok Nagar,
Chennai - 600 083. ... Petitioner

.Vs.

The Assistant Commissioner (ST)(FAC),
Kodambakkam Assessment Circle,
No.1, PAPJM Annex Building,
4th Floor,Greams Road,
Chennai - 600 006. ... Respondent

PRAYER:- Writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records of the respondent in the impugned Assessment Order in TIN/33641424524/2013-14 dated 23.02.2021 and quash the same.

For Petitioner : Mr.P.Jitendra Kumar

For Respondent : Ms.Amirta Dinakaran
Government Advocate

ORDER

Captioned writ petition and writ miscellaneous petition are in the Admission Board. Mr.P.Jitendra Kumar, learned counsel on record for writ petitioner is before this Virtual Court. Ms.Amirta Dinakaran, learned Revenue counsel accepts notice on behalf of lone respondent.

2. Owing to the short point on which captioned main writ petition can be disposed of, with the consent of both sides, captioned writ petition is taken up.

3. Suffice to say that the order that has been called in question in the captioned writ petition is an 'order dated 23.02.2021 bearing reference TIN/33641424524/2013-14' (hereinafter 'impugned order' for the sake of convenience and clarity) being an order made under 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for the sake of brevity). Impugned order is a revision/re-assessment order.

4. Short point is when a revisional order was made earlier with regard to the writ petitioner with regard to the same Assessment year 2013-14, the writ petitioner approached this Court and this Court disposed of the matter by way of an order dated 22.07.2019 made in W.P.No.9288 of 2015 and the order reads as follows:

> 'The petitioner was originally a registered dealer under the Assistant Commissioner (CT), Saligramam Assessment Circle. The registration file of the petitioner came to be transferred to the Assistant Commissioner (CT), Kodambakkam Assessment Circle due to re-organization of assessment circle. Though the petitioner has raised several grounds in the writ petition, one of the main grounds is that some of the objections raised by the petitioner before the Assessing Officer has not been considered.
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> 2. According to the learned counsel for the petitioner, at the time of inspection, the officers had adopted gross profit at 1.16%, whereas the respondent herein has adopted gross profit at 10% on the purchase value, which is illegal. Since the respondent had adopted 1.16% for stock difference and 10% for gross profit on the purchase value, it reveals that the respondent had not verified the Form WW claimed to have been filed by them. Copy of the Form WW is also produced before this Court. It is the specific case of the petitioner that the Form WW filed by the them has not been verified.
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> 3.It is also the submission of the learned counsel that after the bifurcation of the assessment circle, since an opportunity extended to the petitioner could not be duly utilized by them, this Court should take a lenient view and grant them one more opportunity to substantiate their case.

> 4.Taking into consideration the limited prayer sought for and also non consideration of Form WW, this Court remits back the matter to the respondent for fresh consideration, in order to give an opportunity to the petitioner to put forth their case. The impugned assessment order shall be treated as a show cause notice, to which the petitioner shall submit their objections within a period of 15 days from the date of receipt of a copy of this order. The respondent shall pass fresh orders after giving due opportunity of personal hearing to the petitioner. It is made clear that the petitioner shall co-operate, whenever an opportunity of personal hearing is extended to him. The respondent shall endeavor to pass final order within a period of three months from the date of receipt of the objections from the petitioner.
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> 5.This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.'

5. Paragraph 4 of aforementioned earlier order made by another Hon'ble single Judge is of relevance. Though I have taken the view that personal hearing for a revisional order under Section 27 of TNVAT Act is not statutorily imperative vide order dated 01.08.2019 made in W.P.No.22634 of 2019 [State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner], which has been sustained by Hon'ble Division Bench in W.A.No.4073 of 2019 vide order dated 16.12.2019, in the case on hand, as Hon'ble single Judge vide earlier order has thought it fit to direct the respondent to give an opportunity of personal hearing before making the revisional order respondent ought to have given a personal hearing to writ petitioner before making the impugned order. On instructions, learned Revenue counsel submits that the records does not demonstrate that the personal hearing was given qua impugned order. Learned counsel for writ petitioner also pitches his case on this point. Owing to the earlier order made by another Hon'ble single Judge, it would put to rest all controversies if the impugned order is done de novo i.e., afresh after giving a personal hearing.

6. In the light of the narrative thus far, the following order is passed:

> a) Impugned order dated 23.02.2021 bearing reference TIN/33641424524/2013-14 made by the respondent is set aside solely on the ground that

personal hearing has not been given in accordance with order dated 22.07.2019 made in W.P.No.9288 of 2015 by another Hon'ble single Judge;

b) As impugned order is being set aside on the sole ground that personal hearing has not been given though there is a specific directive in this regard vide a judicial order referred to supra, by consent of both sides, personal hearing is now fixed on 01.10.2021 at 03.00pm (afternoon) in the office of the sole respondent;

(c) Post aforementioned personal hearing, the respondent shall redo the revision/re-assessment exercise afresh i.e., de novo and pass orders as expeditiously as possible and in any event within three weeks therefrom i.e., on or before 22.10.2021;

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

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner (ST)(FAC),
Kodambakkam Assessment Circle,
No.1, PAPJM Annex Building,
4th Floor, Greams Road,
Chennai – 600 006.

+1cc to Mr.K.Senguttuvan, Advocate, S.R.No.49143
+1cc to the Special Government Pleader (Taxes), S.R.No.49557

W.P.No.20305 of 2021&
W.M.P.No.21560 of 2021

RSI(CO)
PBS/11/10/2021