IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.21046 OF 2021
&
WMP.NO.22301 OF 2021

Tvl. Sri Sivsakthi Agency
No.8, 1437, B, R.S.Puram
Pandian Nagar
Tirupur – 641 602
Represented by its
Proprietor Mr.Parameswaran Shanmugam ... Petitioner

Vs

Assistant Commissioner (ST)
Anupparpalayam Circle
Tirupur - 641 601. ...Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the Respondent herein leading to issuance of Demand Notice dated 07.10.2020 (vide TIN No.3332306915/2010-11) and quash the same and pass other or further order as it may deem fit under the proper circumstances of the case and thus render justice

For Petitioner : Mr.Sathiyanarayanan

For Respondent : Ms.Amirta Dinakaran
Government Advocate

ORDER

Mr.S.Sathiyanaraynan, learned counsel for the sole writ petitioner is before me and the captioned matter is in the Admission Board.

2. Learned counsel drawing the attention of this Court to a notice dated 07.10.2020 bearing reference no. TIN 3332306915/2010-11 submits that the notice refers to proceedings of the sole respondent being 'proceedings dated 20.06.2014 bearing reference No. TIN 33322306915/2010-11' [hereinafter

'impugned notice' for the sake of convenience and clarity], but the same was never served on the writ petitioner prior to impugned notice .

3. Learned counsel submits that post impugned notice, the petitioner took up the matter with the respondent and the aforementioned 20.06.2014 proceedings of the respondent was furnished to the writ petitioner. To be noted, this is annexed to the typed-set of papers.

4. Ms.Amirta Dinakaran, learned Revenue counsel accepts notice on behalf of the lone respondent, with the consent of learned counsel on both sides, main writ petition is taken up as the matter turns on a very narrow compass. On instructions, learned Revenue counsel submits that records of the respondent do not reveal that the aforementioned proceedings of the respondent dated 20.06.2014 was not served on the writ petitioner prior to the impugned notice. Be that as it may, learned Revenue counsel, on instructions, submits that the impugned notice is pursuant to proceedings 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]. Proviso to Section 22(4) of TNVAT Act makes it statutorily imperative to give a reasonable opportunity of being heard to the writ petitioner.

5. From the narrative thus far, it is clear that aforementioned proviso to Section 22(4) has clearly been breached. Likewise, a notice dated 22.05.2014 regarding levy of penalty is also clearly flawed as that would not arise for proceedings under Section 22 (4) of TNVAT Act.

6. In the light of the narrative thus far, captioned main writ petition is disposed of by making the following order:

(a) Impugned notice being notice dated 07.10.2020 bearing reference TIN No.3332306915/2010-11 is set aside solely on the ground that a reasonable opportunity of being heard i.e., personal hearing vide proviso to Section 22(4) of TNVAT Act has not been provided to the writ petitioner prior to the impugned notice;

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

(c) As a further sequitur to the previous two limbs, the respondent is directed to make assessment de novo i.e., assessment adopting the best judgment method under Section 22(4) of TNVAT

Act after affording a reasonable opportunity of being heard to the writ petitioner;

(d) By consent of both sides, personal hearing is now fixed on 21.10.2021 (Thursday) at 3.00 PM in the office of the respondent;

(e) Writ Petitioner undertakes to co-operate qua personal hearing proceedings and submits that an adjournment will not be sought and the proceedings will not be delayed in any other manner;

(f) The respondent shall pass assessment orders afresh within three weeks from the date of personal hearing i.e. on or before the 11.11.2021.

7. Captioned Writ Petition is disposed of with the above directives. Consequently connected WMP is also disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

GPA/NST

To

The Assistant Commissioner (ST)
Anupparpalayam Circle
Tirupur - 641 601.

+1cc to Mr.S.Sathiyanarayanan, Advocate, S.R.No.51194
+1cc to the Special Government Pleader(Taxes), S.R.No.51043

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AKII(CO)
PM/11/10/2021