IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.18071 & 18072 of 2020
and WMP.Nos.22449 & 22450 of 2020

Tvl. Uzhavan & Co.,
Rep by its Partner V.Kavitha,
No.58, South Thirumalai Giri,
Kalappanayakkanpatti,
Rasipuram-637 404. ...Petitioner in both WPs

Vs.

1.The Assistant Commissioner (ST),
Rasipuram Assessment Circle, Rasipuram.

2.The State Tax Officer,
Attur(Rural)Assessment Circle,Attur. ..Respondents in both WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records on the files of the 2nd respondent in TIN.No.33603164629/2013-14 and TIN.No.33603164629/2014-15 dated 10.01.2020 respectively and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

(In both WPs)
For Petitioner : Mr.R.Senniappan

For Respondents : Mr.TNC.Kaushik

COMMON ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.TNC.Kaushik, learned Government Advocate for the respondents.

2.The challenge is to an order passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') dated 10.01.2020 for the periods 2013-14 and 2014-15. One of the main grounds argued is on the aspect of non-service of notice prior to finalisation of assessment. In this regard, the counter filed by the respondents was to the effect that notice had been served by R2 (Rural Assessment Circle), who is the State Tax Officer by way of affixture.

3. I had passed the following order on 24.06.2021 in this regard:

> 'Counter filed by the respondents undertake that the petitioner has been served by R2 by way of an affixture. Let it be ascertained as to whether direct mode of service has been resorted to prior to service of affixture, as required in terms of Rule 19 of the Tamil Nadu Value Added Tax Rules, 2007, which reads as follows:
>
>> 19. Service of notices summons or orders.- (1)The service on a dealer of any notice, summon or order under the Act or these rules may be effected either electronically or manually in any of the following ways, namely:-
>>
>> (a) by giving or tendering it to such dealer or his manage or agent or the legal practitioner appointed to represent him or to his authorised representative;
>>
>> Explanation.-Endorsement by person who delivers the notice, summon or order of having tendered or given will be proof for the purpose of this sub-rule.
>>
>> (b) if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family; or
>>
>> (c) by sending it to the address of the dealer by registered post; or
>>
>> (d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence in the presence of two independent witnesses.

(2) Where any Hindu Undivided Family, firm or other association of persons is partitioned, dissolved or discontinued, notice, summon or order issued under the Act or these rules may be served on any member of the Hindu Undivided Family, any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before such partition dissolution or discontinuance .

2. List on 30.06.2021 within the top five matters after admission.'

4. Today Mr.TNC.Kaushik would state on instructions that notice had been issued by recourse to direct modes of service as set out under Rule 19(1)(a,b & c) by R1, who is the Assistant Commissioner (ST) Rasipuram Assessment Circle. Thereafter, the assessment was transferred from R1 to R2. The incumbent assessing officer i.e. R2 ought to have, in order to afford proper opportunity, also issued notice taking resort to direct methods of service as set out under Section 19(1)(a)(b)&(c) instead of which he proceeded to straight away serve notice by indirect means, by way of affixture.

5. I am of the view that the procedure followed in this case is correct in so far as Rule 19 provides for a slew of methods for service of notice. Rule 19(1)(a)(b)&(c) set out direct methods by handing over the notice to the dealer/manager/ agent/legal practitioner/authorised representative or to an adult member of his family or by sending it to the address of the dealer by registered post. The direct methods of service should first be exhausted and only in a situation where the same are found ineffective, should the officials resort to the procedure under Section 19(1)(d), which is by way of affixture. The impugned order is thus vitiated by lack of opportunity prior to finalisation of the same.

6. In this view of the matter, I set aside the assessment and allow both the writ petitions. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To
1.The Assistant Commissioner (ST),
Rasipuram Assessment Circle, Rasipuram.

2.The State Tax Officer,
Attur (Rural) Assessment Circle, Attur.

+1 cc to Government Pleader Sr.No. 30470

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PL(CO)
B.VC(22.07.2021)