IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.Nos.22507 & 22512 of 2021
and
W.M.P.Nos.23730 & 23732 of 2021

M/s.Aakanksha Distributors Private Limited,
Represented by Dharma Bapna (Director)
Old No.57/1, New No.72, 6/1, Na,
Nandanam, Chennai-600 035. ...Petitioner in both W.P.s

Vs.

Assistant Commissioner (ST)
T.Nagar Assessment Circle
Chennai-28. ...Respondent in both W.P.s

Prayer in W.P.No.22507 of 2021 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in order dated 15.04.2021 in Ref.ZD3304210013356 in Form GST DRC 07 and quash the same.

Prayer in W.P.No.22512 of 2021 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in order dated 12.08.2021 in GSTIN 33AACCA5297L1ZF/2017-18 and quash the same.

For Petitioner in both W.Ps : Mr.Adithya Reddy

For Respondent in both W.Ps : Ms.Amirta Dinakaran, Government Advocate.

C O M M O N O R D E R

In the captioned writ petitions, a summary of order dated 15.04.2021 bearing reference No.ZD3304210013356 made under Section 73 of 'Tamil Nadu Goods and Services Tax Act, 2017 (Tamil Nadu Act 19 of 2017)' [hereinafter 'TN-GST Act' for the sake of convenience and clarity] and subsequent intimation dated 12.08.2021 bearing reference GSTIN 33AACCA5297L1ZF/2017-18 made under Section 161 of TN-GST Act have been called in question.

To be noted, these two orders shall be collectively referred to as 'impugned orders' for the sake of convenience and clarity.

2. Short point is whether personal hearing was afforded to writ petitioner in accordance with sub-section (4) of Section 75 of TN-GST Act which reads as follows:

> '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.'

3. Read this in conjunction with and in continuation of earlier proceedings made in previous listings on 22.10.2021 and 26.10.2021, which read as follows:

> Proceedings dated 22.10.2021:
>
> 'Ms.Amirta Dinakaran, learned Revenue Counsel accepts notice on behalf of lone respondent in both the writ petitions and seeks time to get instructions as to whether personal hearing qua sub-section (4) of Section 75 of the Tamil Nadu Goods and Services Tax Act, 2017 (TN-GST Act) was given to the writ petitioner.
>
> 2. Registry to show the name of the Revenue Counsel in the next listing.
>
> 3. List in the Admission Board on 26.10.2021.'
>
> Proceedings dated 26.10.2021:
>
> 'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 22.10.2021.
>
> 2. Adverting to the earlier proceedings, learned Revenue counsel requests for three more days time saying there is some difficulty. Request acceded to.
>
> 3. List in the ADMISSION BOARD on Friday i.e., 29.10.2021.'

4. Owing to the short point on which the captioned writ petitions turn, main writ petitions are taken up with the consent of learned counsel on both sides.

5. This Court is informed that there is nothing to demonstrate from the records that personal hearing was either

offered or held with regard to the aforementioned impugned orders qua writ petitioner.

6. As there is no disputation or disagreement, in cases of this nature, personal hearing is statutorily imperative qua sub-section (4) of Section 75 of TN-GST Act, both the writ petitions are disposed of by making the following order:

(a) Both the impugned orders i.e., summary of order dated 15.04.2021 bearing reference ZD3304210013356 and order dated 12.08.2021 bearing reference GSTIN 33AACCA5297L1ZF/2017-18 are set aside on the sole ground that personal hearing is statutorily imperative under Sub-section (4) of Section 75 of TN-GST Act have not been given to the writ petitioner;

(b) Owing to the aforementioned limb of the order, though obvious, it is made clear that this Court has not expressed any opinion or view on the merits of the matter;

(c) By the consent of both sides, personal hearing is now fixed on 12.11.2021 (Friday). Time and Venue shall be 3.00 p.m. in the afternoon in office of the lone respondent in proceedings qua both the writ petitions;

(d) Learned counsel for writ petitioner undertakes to participate in the aforementioned personal hearing without seeking an adjournment or delaying the matter in any other manner. Post personal hearing in the aforesaid manner, the respondent shall re-do the legal drill qua two proceedings on the merits of the matter in accordance with law, as expeditiously as business of the respondent would permit and in any event, within four weeks therefrom i.e., on or before 10.12.2021;

7. Captioned Writ Petitions are disposed of with the aforementioned directives. Consequently, writ miscellaneous petitions are disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

nsa/mk

To

Assistant Commissioner (ST)
T.Nagar Assessment Circle
Chennai-28.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.56406

+1cc to the Special Government Pleader (Taxes), S.R.No.56790

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and
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SSV(CO)
RVM(22/11/2021)