



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)Nos.14395 to 14398 of 2021

and

M.P (MD) .Nos. 11326, 11330, 11332 and 11333 of 2021

(Through Video Conference)

M/s.Bright Steels,
represented by its Proprietor,
No.5, New Raja Colony,
Beemanagar,
Trichy-1.

... Petitioner in all cases

Vs.

The State Tax Officer,
Inspection Cell-II,
Trichy.

... Respondent in all cases

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in GSTIN:33ALUPT9437DIZJ/2017-18, GSTIN:33ALUPT9437DIZJ/2018-19, GSTIN:33ALUPT9437DIZJ/2019-20 and GSTIN:33ALUPT9437DIZJ/2020-21, respectively, and quash the said assessment orders dated 05.02.2021.

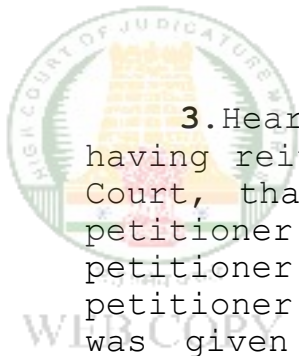
In all cases:

For Petitioner : Mr.P.V.Sudhakar
For Respondent : Mr.R.Suresh Kumar
Government Advocate

COMMON ORDER

In all these writ petitions, the issue raised herein is one and the same, as impugned assessment orders passed by the revenue against the petitioner Assessee for four Assessment years, that is, from 2017-18 to 2020-21, are under challenge, and by consent of the learned counsel appearing for both sides, all these writ petitions are heard together and being disposed of by this common order.

2.As against the impugned order of assessment dated 05.02.2021, though there is an appeal provided under Section 107 of the Tamil Nadu Goods and Services Tax Act, 2017(in short 'the Act'), such an appeal has not been filed, and these writ petitions had been filed, challenging these assessment orders on the only ground that the personal hearing, which is mandated under Section 75 (4) of the Act had not been given to the petitioner.



3. Heard the learned counsel appearing for the petitioner, who having reiterated the aforesaid, would invite the attention of this Court, that before passing the impugned orders on 05.02.2021, the petitioner was directed to file voluminous documents, which the petitioner had filed and in this regard, time was sought for by the petitioner by communication dated 14.12.2020 and accordingly, time was given by communication of the respondent dated 15.12.2020, whereby, the respondent directed the petitioner to appear on 29.12.2020 to file objection or reply and also for personal hearing. Though such an opportunity was given, the petitioner could not appear on 29.12.2020 due to unavoidable reason, but on the very next day, i.e., on 30.12.2020, within 24 hours, the petitioner was able to appear and on that date, the petitioner had given a detailed reply and objection with voluminous documents, where the petitioner had also asked for personal hearing. Since such a request had been made asking personal hearing, the petitioner was expecting that such a personal hearing would be given. However, without giving any such personal hearing, as mandated under the provisions of law, as stated supra, the respondent proceeded to pass the impugned orders, dated 05.02.2021. Therefore, on the ground of violation of the mandatory requirement of giving personal hearing to the Assessee, that is, the petitioner, the present writ petition has been filed assailing the impugned orders. Therefore, all these impugned orders are liable to be interfered with by this Court, on the sole ground of violation of the provisions for giving personal hearing, and therefore, on that ground, the learned counsel for the petitioner seeks indulgence of this Court.

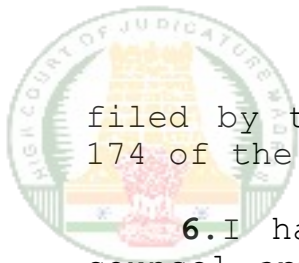
4. Per contra, Mr.R.Suresh Kumar, learned Government Advocate, appearing for the respondent has relied upon the following findings given by the respondent in the impugned assessment orders:

"To the notices issued to the taxable persons on above lines, by inviting him to file his objections, if any to the above proposals in writing before the undersigned on or before 04.12.2020 along with proper supportive documents for each and every issues separately. He was also given personal hearing in this regard on 04.12.2020 and was requested to appear before the undersigned to represent his case in detail along with the connected records and documents to substantiate his claim. The taxable person was also informed that if he fail to file objections or fail to appear for the personal hearing, it will be presumed that he had nothing to offer in this regard and the orders on the proposals will be passed without giving any further notice. Since the taxable person was not turned out neither to file his objections nor appeared for personal hearing posted on 04.12.2020 another notice was



issued on 05.12.2020 and he was again invited from this office to file his objections and he was also requested from this office to appear for personal hearing posted on 14.12.2020. But later on 14.12.2020, the taxable person had filed an adjournment letter and the taxable person, in his adjournment letter dated 14.12.2020 had requested a further time fifteen days. Hence, by allowing the time requested by the taxable person, a further time of 15 days was given to the taxable person and a notice was issued to the taxable person from this office on 15.12.2020 by inviting him to file his objections on or before 29.12.2020 and a personal hearing was also provided to them and posted on 29.12.2020. Later on, 30.12.2020, the taxable person, Tvl.Bright Steels, Trichy had filed his letter of objections along with the details of his ledger accounts in respect of certain dealers and the copies of certain invoices and had appeared for the personal hearing on the same day. During the personal hearing conducted on 30.12.2020 by the undersigned the taxable person had reiterated the contentions raised by him in his reply of objections and requested not to levy penalty as per the notice issued and further requested to pass final orders by considering his reply of objections. The replies furnished by the tax payer along with the copies of ledger account details and certain copies of invoices filed by him were verified carefully along with the defects mentioned in the pre-assessment notice and are hereby discussed as detailed below:"

5.By relying upon this findings recorded by the Assessment Officer, Mr.R.Suresh Kumar, learned Government Advocate appearing for the respondent, would stress the point that, it is not the first time, at least two or three times, such an opportunity of personal hearing had been given to the petitioner, however, the same had not been utilised by the petitioner. Lastly, on 29.12.2020, such an opportunity was given, on that day, the petitioner had not chosen to appear, however, on the very next day, ie., on 30.12.2020, he appeared and he filed the objection along with the documents, and on that date, the personal hearing was given, having utilised the personal hearing he has left and that has been recorded in the order, which is impugned herein. Therefore, contra to the said sequence of events, having been recorded, now by way of raising in the present writ petition, the petitioner has taken a stand that, no such personal hearing was given as contemplated under Section 75(4) of the Act and therefore, the said reason cited by the petitioner's side is not tenable in view of the facts, which had been recorded in the order. Hence, the learned Government Advocate seeks dismissal of the writ petition on the ground that appeal can very well be



filed by the petitioner against the order impugned, under Section 174 of the Act.

6.I have considered the said submissions made by the learned counsel appearing for the parties. Since these writ petitions were filed on the only ground that no opportunity was given as per Section 75(4) of the TNGST Act, 2017, the relevant provisions of the Act is extracted hereunder:

"75.General provisions relating to determination of tax

(1) Where the service of notice or issuance of order is stayed by an order of a Court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub sections (2) and (10) of section 74, as the case may be.

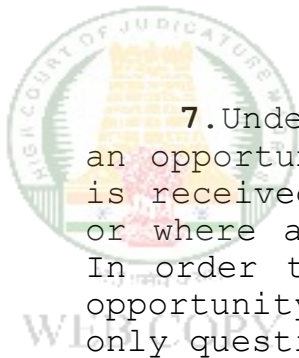
(2) Where any Appellate Authority or Appellate Tribunal or Court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-mis statement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper office shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a Court, such order shall be issued within two years from the date of communication of the said direction.

(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.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings."



7. Under Sub Section 4 of Section 75, it has been mandated that an opportunity of being heard shall be granted, where, if a request is received in writing from a person chargeable with tax or penalty or where any adverse decision is contemplated against such person. In order to meet out this mandatory requirements, whether such an opportunity was given to the petitioner by the respondent is the only question to be answered.

8. In this context, it is admitted that, already a notice of personal hearing was given to the petitioner, fixing the personal hearing on 04.12.2020. However, on 04.12.2020, neither objections had been filed nor the petitioner appeared in person for the personal hearing, therefore, subsequent notice was issued on 05.12.2020, where, again he was invited by the office of the respondent to file his objection and also requested him to appear before the respondent office for personal hearing on 14.12.2020. However, on 14.12.2020, the taxable person had filed an adjournment letter and the taxable person, in his adjournment letter dated 14.12.2020, had requested a further time of 15 days.

9. That was also accepted and allowing the same, as requested by the petitioner, a further time of 15 days was given to the petitioner and a notice was issued to the petitioner from the respondent office on 15.12.2020 inviting him to file objection on or before 29.12.2020 and a personal hearing was also provided to him on 29.12.2020.

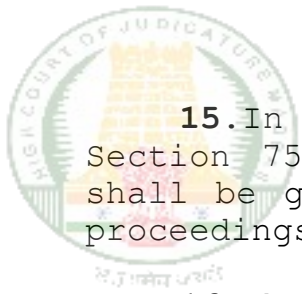
10. Even this opportunity was not utilised as he did not appear and file any objection till 29.12.2020.

11. However, one day later, that is, on 30.12.2020, the petitioner appeared and filed objection, where he was given such opportunity of hearing, that was utilised by him and thereafter, the respondent seems to have proceeded to pass the impugned assessment order.

12. In this context, the provision, that is, Section 75(4) of the Act, has mandated that, only an opportunity of hearing, that means one opportunity shall be given mandatorily to the Assessee for personal hearing.

13. Such one opportunity had been given, and ultimately, the third opportunity also had been given to him on 30.12.2020, where he was permitted to file objection or reply and personal hearing was also given to him was utilised.

14. However, it is argued by the learned counsel for the petitioner that minimum three opportunities shall be given and therefore, since no minimum of three opportunities had been given, that vitiates the proceedings.



15.In this context, he relies upon proviso to Sub Section 5 of Section 75, which reads that, "provided that no such adjournment shall be granted for more than three times to a person during the proceedings."

16.That means, one opportunity must be given mandatorily, and if need arises, time shall be given on the request of the Assessee, and such kind of adjournments maximum shall be granted three times and not beyond that. Therefore, what has been restricted under the proviso to Sub Section 5 is concerned, to grant maximum number of adjournments only three times, hence, that would be treated only maximum but not minimum. If the Assessee has not utilised the same, another opportunity need not be given to the Assessee as a matter of right. If we strictly construe the provision of Sub Section 4 of Section 75 of the Act, it is mandated that, only one opportunity shall be given, if that opportunity has not been utilised, on sufficient reasons, by way of any adjournment letter, if any other/further opportunity was sought for, that can be considered and granted only by the Officer concerned, who deal with the matter and in this regard, the law does not mandate that, mandatorily three such personal hearings shall be given to the Assessee. Therefore, the interpretation sought to be given as claimed by the counsel for the petitioner that Sub Section 4 of Section 75 is untenable, therefore, it is liable to be rejected, accordingly, the said contention is rejected.

17.Coming to the factual matrix of this case, as has been quoted hereinabove, it has been recorded that, more than twice, an opportunity had been given and last such opportunity was given on 30.12.2020, where the petitioner did appear and therefore, it cannot be stated that no opportunity had been given, and by thus, it has followed the mandatory provisions of Section 75 (4) of the Act.

18.In that view of the matter and having regard to the factual matrix as discussed above, this case cannot fall under the category of no opportunity of personal hearing was given, and hence this Court feel that, it cannot be treated that the respondent has violated the mandatory provisions contained in Section 75(4) of the Act. Accordingly, this writ petitioner, on the ground of violation of Section 75(4), has not made out any case and therefore, the challenge made in this writ petition is liable to be rejected, accordingly it is rejected. Moreover, as has been rightly pointed out by the learned Government Advocate appearing for the respondent that, since under Section 107 of the Act, within 90 days, appeal can be filed by the petitioner against the impugned assessment order, it is open to the petitioner to file such appeal before the Appellate Authority, as contemplated, and hence, these writ petitions cannot be entertained by this Court at this juncture, accordingly, these writ petitions fail and hence, these are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous



petitions are closed.

19. If any such appeal is filed before the Appellate Authority, while entertaining the appeal, the time consumed by the petitioner, in filing this writ petition, can be excluded.

WEB COPY

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The State Tax Officer,
Inspection Cell-II,
Trichy.

+4 CC to M/s.S.RAJA JEYA CHANDRA PAUL, Advocate (SR-26309[F] dated 13/08/2021)

+1 CC to M/s.GP (SR-26376[F] dated 16/08/2021)

W.P. (MD) No.14395 to 14398 of 2021
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