BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)Nos.16344 to 16346 of 2021
and
W.M.P(MD)Nos.13194, 13197, 13200,
13201, 13203 and 13204 of 2021

Tvl. Sri Kulasai Arasi & Co.,
Rep. by its Proprietor,
A.Balaneelamegam Kokiladevi ...Petitioner in all cases

-Vs-

The State Tax Officer,
Central Intelligence Wing-II,
Office of Joint Commissioner (ST) (intelligence),
Madurai Division,
Madurai. ... Respondent in all cases

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for entire records relating to the impugned order for the financial assessment years 2018-19, 2019-20 and 2020-21 respectively, in GSTIN: 33DNEPK3014C1ZQ, dated 30.06.2021, issued by the respondent is liable to be quashed as illegal and consequentially direct the respondent herein to conduct proper enquiry after affording sufficient opportunity to the writ petitioner and pass appropriate orders.

In all cases:
For Petitioner : Mr.VR.Shanmuganathan
For Respondent : Mr.R.Sureshkumar
Government Advocate

COMMON ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for entire records relating to the impugned order for the assessment years 2018-19, 2019-20 and 2020-21 respectively, in GSTIN:33DNEPK3014C1ZQ, dated 30.06.2021, issued by the respondent and quash the same and consequentially direct the respondent herein to conduct proper enquiry after affording sufficient opportunity to the writ petitioner.

2.Since the issue raised by the petitioner relates to the assessment made through the impugned orders for three assessment years 2018-19, 2019-20 and 2020-21 against the same Assessee/petitioner, with the consent of the learned counsel appearing for both sides, all these writ petitions are heard together and are disposed of by this common order.

3.The petitioner is doing a dealership business of 'M' Sand, Gravel, Jally, etc., in the name and style of M/s.Sri Kulasai Arasi & Co., at Kadaladi, Ramanathapuram District. The petitioner has registered as a proprietary concern under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017, [hereinafter referred to as "Act"] and its assessment number is GSTIN:33DNEPK3014C1ZQ.

4.The petitioner claimed that it has filed the return properly without any fault, however, on 21.12.2020, all of a sudden, the Joint Commissioner (ST) (Intelligence), Madurai, vide, proceedings, dated 21.12.2020, since have authorised the State Tax Officer (Central Intelligence Wing II), Madurai, that is, the respondent herein to inspect the premises of the petitioner, such an inspection had been conducted on the said day, that is, on 21.12.2020, pursuant to which, a show cause notice was issued by the respondent to the petitioner on 07.01.2021 in respect of the aforesaid three assessment years.

5.Thereafter, on 07.01.2021, 25.02.2021 and 08.03.2021, the petitioner sent representations to the respondents seeks for further time to respond to the show cause notice, because of the reason that due to COVID-19, proprietars of the petitioner concern as well as some of the family members got affected of COVID-19, and therefore, on that ground, they sought for some time.

6.Subsequently, on 29.04.2021, a further notice was issued by the respondent, whereby, a personal hearing date was given, that is, on 07.05.2021 at 11.30 a.m., and the petitioner was directed to appear with the other supportive documents, otherwise, orders would be passed based on the available records.

7.In response to the said notice, the petitioner claimed that, on behalf of the petitioner, on 07.05.2021, his representative appeared, and made a request in writing that because of COVID-19, one of the family members expired, and the auditor of the petitioner firm also, due to COVID-19, was not in a position to respond to the petitioner to collect the books of accounts for the presentation before the respondent, and therefore, for all these reasons, the petitioner had made a request in his letter, dated 07.05.2021 for a 30 days period as a final chance to respond.

8.Thereafter, according to the petitioner, straight away, the impugned order of assessment, dated 30.06.2021, has been passed in all the three assessment years, without giving 30 days time as sought for and without giving any further opportunity to the petitioner to make available the books of accounts as required by the revenue.

9.Therefore, on the ground of alleged violation of principle of natural justice, the petitioner has chosen to approach this Court by filing these writ petitions, instead of preferring a regular statutory appeal to the appellate authority.

10.Reiterating the aforesaid facts, Mr.VR.Shanmuganathan, learned counsel appearing for the petitioner, would submit that, though in the impugned order, dated 30.06.2021, in the reference column, at Sl.No.14, it has been mentioned that there was a personal hearing notice, dated 18.06.2021 fixing the personal hearing on 28.06.2021, was issued and since the same was not responded by the petitioner, the respondent, as if, proceeded further and passed the impugned order of assessment, as has been stated.

11.However, the fact remains that, according to the petitioner, after 07.05.2021 letter, whereby, the petitioner had made a request for 30 days time, no further notice whatsoever, as claimed by the respondent, had been served on the petitioner, therefore, the alleged 18.06.2021 personal hearing notice fixing the personal hearing, dated 28.06.2021, since has not been served on the petitioner, that cannot be taken as an opportunity, finally sought for by the petitioner, given to the petitioner, and therefore, on that ground itself, the impugned orders are vitiated, he contended. Apart from this alleged violation of principle of natural justice, though several other grounds have been emerged on the merits of the issue, however, the learned counsel for the petitioner, in view of the limited scope of the writ petition, where, under Article 226 of the Constitution of India, this Court can go into only with the aspect of any violation of principle of natural justice or violation of statute or for want of jurisdiction alone, and all other aspects on merits of the issue, can only be decided by the appellate authority, for which the parties can be relegated to, the learned counsel has confined only with the ground of such alleged violation of principle of natural justice, by citing the said claim made by the respondent that a notice, dated 18.06.2021 has been served on the petitioner.

12.Per contra, Mr.R.Suresh Kumar, learned Government Advocate, appearing for the respondents, on instructions, would submit that infact, the notice, dated 18.06.2021, has been sent by speed post to the petitioner with two addresses, which she has given, and the said consignment, since has been delivered as per the postal tracking record, it shall be deemed that the notice have been served on the petitioner, and therefore, it cannot be stated that the final opportunity of 30 days as sought for by the petitioner through his letter, dated 07.05.2021, was not given to the petitioner, therefore, on that ground, the petitioner cannot maintain these writ petitions before this Court, and in this regard, if at all, the petitioner has got any grievance over the merits of the issue in pursuance of the impugned orders of assessment, the petitioner can very well approach the appellate authority, and therefore, on the ground of alleged violation of principle of natural justice, these writ petitions cannot be entertained, he contended. In support of his contention, the learned Government Advocate has produced the photocopy of the postal tracking record and heavily rely upon the same, he seeks dismissal of these writ petitions.

13.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14. Since the impugned orders of assessment are under challenge in these writ petitions, for the three consecutive assessment years, that is, from 2018-19 to 20-21, as against these impugned orders, the petitioner can very well file an appeal. However, on the alleged ground of violation of principle of natural justice, since the petitioner has moved these writ petitions, this Court wants to examine, whether any such violation has been taken place in this regard.

15. Pursuant to the inspection conducted in this regard, dated 21.12.2020, there has been show cause notices, where some opportunities were already been given to the petitioner, and each time, the petitioner made his representations to the respondent to give further time, due to COVID-19.

16. In this regard, the notice dated 29.04.2021, when was served on the petitioner, that was responded by the petitioner by sending a letter on 07.05.2021, stating that since the petitioner suffered with COVID-19, and some of the family members also affected, and one of the family members expired, for all these reasons, the petitioner sought for 30 days time as a final chance to produce the books of accounts, and this has been made through her letter, dated 07.05.2021.

17. Up to this position, there is no dispute as the respondent has accepted this position up to 07.05.2021, which is reflected in the impugned order, dated 30.06.2021 itself.

18. After 07.05.2021 request, whether any further final opportunity as sought for by the petitioner to the extent of 30 days, was given to the petitioner or not is the only question.

19. In this regard, it is the claim of the respondent that on 18.06.2021, a notice was issued, which was sent to the petitioner to the address given by the petitioner on 21.06.2021, and one such letter was served on 22.06.2021, and another letter was served on 26.06.2021 and this can be confirmed by verifying the postal tracking record, where it has been stated that the delivery confirmed on 22.06.2021 and 26.06.2021, respectively.

20. Mainly, on these basis, where the personal hearing notice, dated 18.06.2021, fixing the personal hearing on 28.06.2021, since had been served or delivered on the petitioner, and despite the same, since the petitioner has not come forward to appear and produce the books of accounts on 28.06.2021 personal hearing, the respondent passed the impugned order on 30.06.2021, this is very much evident in the very impugned order itself.

21. However, Mr.VR.Shanmuganathan, learned counsel appearing for the petitioner, has received a postal tracking record communication from the postal department, where the said communication, that is, personal hearing notice, dated 18.06.2021, though had been despatched by speed post on 21.06.2021 at the respondent side, the same, on the alleged reason of returned as refused, has been returned back to the respondent itself on 22.06.2021 and 26.06.2021, therefore, what has been stated in the postal tracking record as has been produced by the respondent side stating that the delivery confirmed on 22.06.2021 and 26.06.2021 is nothing but a re-delivery of the consignment back to the sender itself, that is, the respondent and therefore, the consignment has never been served on the petitioner and the petitioner has never received the same.

22. In response to the same Mr.R.Suresh Kumar, learned Government Advocate appearing for the respondent, has pointed out that as per Section 169 of the Act, in Sub Section 3, it has been made clear that, when a decision, order, summons or notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit, unless the contrary is proved.

23. Therefore, under Sub Section 3 of Section 169 of the Act, it is the duty of the revenue to send the notice to the Addressee and once the period of postal transit is over, unless the contrary is proved by the Addressee, it can be presumed or deemed that the service has been completed, therefore, based on this, the revenue can very well presume against the Addressee and accordingly, in this case, since the postal track record has confirmed that the notice sent, dated 18.06.2021 and 21.06.2021, since has been delivered on 22.06.2021 and 26.06.2021, which shall be presumed that the notice has been served within the meaning of Sub Section 3 of Section 169, and accordingly, the respondent has completed the assessment and passed the impugned assessment order on 30.06.2021, therefore, it cannot be said to be vitiated.

24.However, if we look at the two postal communications or tracking records produced both by the respondent as well as the petitioner, it can be easily ascertained that, no doubt the consignment has been booked on 21.06.2021 by the respondent, and the delivery confirmed on 22.06.2021 and 26.06.2021, is nothing but a re-delivery of the consignment concerned, back to the respondent alone, in view of the alleged reason that there has been a refusal, and therefore, it was returned.

25.If at all, there is a refusal on the part of the petitioner, the same must have been made in the endorsement of the postal cover and normally, that kind of refusal can be treated as a deemed service.

26.However, in the impugned order, it has been proceeded by the respondent, as if, the notice has been served, despite the same, the petitioner has not come forward to respond on 28.06.2021 by way of personal hearing, and no books of accounts have been produced.

27.Nowhere, in the impugned order, it has been stated that the final notice, dated 18.06.2021, since has been refused to be received by the addressee, that is, the assessee, the same was deemed to be a service within the meaning of Sub Section 3 of Section 169, and therefore, accordingly, the respondent has proceeded to finalise re-assessment.

28.Since there is a specific postal tracking record under which, it has been stated that the delivery on 22.06.2021 and 26.06.2021 respectively, is nothing but a returning back of the consignment to the respondent, therefore, merely based on such a tracking record from the postal department, it cannot be presumed or deemed that the petitioner has refused and put an endorsement to that effect to the postal department, and because of which, by invoking Sub Section 3 of Section 169, the respondent proceeded to issue the impugned assessment order as if, that the final opportunity notice was deemed to be served on the petitioner.

29.In view of these factual matrix, the personal hearing notice, dated 18.06.2021, fixing the personal hearing on 28.06.2021, since has not been effectively served on the petitioner, it cannot be presumed that the petitioner, having receipt of the final notice, has not come forward to respond by way of personal hearing by appearing before the respondent with books of accounts on 28.06.2021.

30. Therefore, on these factual matrix, this Court is inclined to accept the plea raised by the petitioner that the final opportunity notice has not been properly served, therefore, the 30 days time sought for by the petitioner, since has not been given, that too, on the ground of COVID-19, it can be treated as a violation of principle of natural justice, and therefore, on that ground, the impugned order can be interfered with.

31. During the course of argument, Mr.VR.Shanmuganathan, learned counsel appearing for the petitioner, on instructions, has submitted that, if the specific date is fixed by this Court within 30 days time, on that date, the petitioner will be ready and willing to appear with all books of accounts available with him, before the respondent, without raising any other reason or ground, as to whether there are two different authorities, one is the inspecting authority, and another is the assessing authority, and on that date, on appearance with production of books of accounts, considering the same, the respondent can decide the issue finally, he contended.

32. In view of the said stand taken by the petitioner, in order to test the bonafide on the part of the petitioner, and to give one more final chance to the petitioner to put forth his case, this Court feel that, the impugned order can be set aside and the matter can be relegated to the respondent, for giving one such opportunity as indicated above.

33. In view of the aforesaid discussion, this Court is inclined to dispose of these writ petitions with the following order:

> “that the impugned orders are set aside and the matters are remitted back to the respondent for reconsideration. While reconsidering the same, the petitioner shall be given a final opportunity to appear before the respondent with all available books of accounts, without seeking any further adjournments on any other ground, and such a date can be intimated to the petitioner within one week, from the date of receipt of a copy of this order, by giving atleast two weeks time to the petitioner, and on that date, the petitioner, without fail, shall appear with books of accounts before the respondent and put forth their case, thereafter considering the same the final orders, with regard to the assessment, if any, shall be passed by the respondent.”

34. With these directions and observations, these writ petitions are disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PJL

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,
Central Intelligence Wing-II,
Office of Joint Commissioner (ST) (Intelligence),
Madurai Division,
Madurai.

+1 CC to M/s.SPL. GP (SR-28952[F] dated 14/09/2021)

Order made in
W.P.(MD)Nos.16344 to 16346 of 2021
Dated:
13.09.2021

SK(CO)
GC(12.01.2022) 8P 3C