BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 31.03.2021

CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.24285 of 2019
and
WMP(MD)No.20893 of 2019

M/s.Arasan Syntex Limited,
Rep.by its Director D.Senthilvel ... Petitioner

Vs.

1.The Appellate Deputy Commissioner
(State Tax),
Commercial Taxes Building,
Reserve Line Road, Palayamkottai,
Tirunelveli.

2.The Departmental Representative
(State Tax),
Commercial Taxes Buildings,
Reserve Line Road, Palayamkottai,
Tirunelveli.

3.The State Tax Officer,
Commercial Taxes Building, Ettayapuram.

4.The Secretary to Government,
Commercial Tax Department,
Secretariat, Chennai – 9.

5.The Secretary,
Sales Tax Appellate Tribunal,
Chennai. ...Respondents

(R4 & R5 were suo motu impleaded vide court order dated 23.02.2021)

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ Certiorarified of Mandamus, to call for the records pertaining to the impugned proceedings passed by the 1st respondent in Appeal No.& Year 25/18(CST), dated 18-09-2019 confirming the order passed by the 3rd respondent dated 13-08-2018 in CST 469563/2015-16 and quash the same as the same is passed in gross violation of principles of natural justice and direct the 3rd respondent to re-do the assessment after providing an opportunity of personal hearing to the petitioner as per the guidelines given by the Honourable Division Bench of this Court reported in 33 VST 333 in the case of M/s.SRC Projects Private Ltd., rep. by its Chief Executive Officer, Salem, vs. The Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai.

For Petitioner : Mr.A.Satheesh Murugan

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

2.The petitioner is an assessee registered with the third respondent. The case on hand pertains to the assessment year 2015-16. The petitioner suffered an adverse order of assessment on 13.12.2017. After the petitioner filed declaration forms in Form C and Form F towards inter-state sale and consignment sale, the revised order of assessment was passed on 13.08.2018. In the said order also, the petitioner was called upon to pay tax and penalty. Aggrieved by the same, the petitioner filed statutory appeal before the appellate authority. The appeal was dismissed on 18.09.2019. Questioning the same, this writ petition came to be filed.

3.The petitioner in the affidavit filed in support of the writ petition has contended that the appellate authority had referred to and relied on the written statement filed by the departmental representative while passing the impugned order. His grievance is that the said written statement was never served on the appellant/assessee. In this regard, the learned counsel for the petitioner drew my attention to Rule 14(5) of the Tamil Nadu Value Added Tax Rules, 2007. The said provision reads as follows :

> "14.Appeal and revision.-
> (1)...
> (2)...
> (3)...
> (4)....
> (5)On the date fixed for hearing or any other date to which the hearing may be adjourned, the appellant shall, ordinarily, be heard first in support of his appeal. The assessing authority or the Departmental representative shall be heard next. The Departmental Representative shall file a written statement and the appellant shall be entitled to reply."

4.A mere look at the aforesaid provision indicates that the Departmental Representative is obliged to file the written statement and thereafter, the appellant would be entitled to reply in response thereto. In the affidavit, a specific ground has been taken that the copy of the written statement was not served on the assessee. In the counter affidavit filed by the respondents, this point has not been controverted.

5.The contention of the learned counsel for the petitioner is that there is a violation of the principles of natural justice in view of the infraction of what has been laid down in Rule 14(5) of the Tamil Nadu Value Added Tax Rules, 2007. I sustain the contention of the petitioner's counsel. Therefore, the order impugned in this writ petition is quashed and the matter is remitted to the appellate authority. A copy of the written statement filed by the departmental representative will be served on the appellant/petitioner herein and thereafter, the appellate authority shall pass orders afresh in accordance with law.

6.When the writ petition was listed for admission before this Court, this Court sought details regarding pendency before the Main Bench of Sales Tax Appellate Tribunal as well as the Additional Benches. The Main Bench of Sales Tax Appellate Tribunal is at Chennai and there are three Additional Benches – one at Chennai, one at Madurai and one at Coimbatore. The number of cases pending before the Madurai Bench is 3165. However, in Coimbatore, there are hardly 910 cases pending. In the Additional Bench at Chennai also, there are only 607 cases pending. Therefore, I indicated that there has to be re-distribution of work. The Chairman of the Tribunal is very much possessed of the authority to effect such re-distribution.

7.I felt that the workload before the Madurai Bench can be reduced by transferring the appeals arising out of the Revenue Districts of Trichy, Pudukkottai, Perambalur, Ariyalur and Karur to the Additional Bench at Coimbatore. But then, the Additional Bench at Coimbatore will have to be conferred with territorial jurisdiction for these districts. Besides, the post of Judicial Member in Coimbatore Bench is lying vacant. A full time judicial member will have to be posted. Only if the infrastructural facilities at the Coimbatore Bench are upgraded, the counsel who are based in Madurai and Chennai can appear through Video Conferencing and the litigants will not have to incur extra expenditure. I wanted the learned Special Government Pleader (Taxes) to obtain instructions on the following aspects :

(a) upgrading the infrastructural facility at Coimbatore Bench,

(b) posting of full time Additional Member for the said Bench and

(c) conferring of additional territorial jurisdiction for the Additional Bench at Coimbatore as a permanent solution.

8.When the matter was taken up today, the learned Special Government Pleader produced a copy of the letter dated 24.03.2021 addressed by the Principal Secretary to Government, Commercial Taxes and Registration (A1) Department. It is stated that the Secretary to Government had discussed with the Chairman of Tamil Nadu Sales Tax Appellate Tribunal, Chennai in this regard. It was noted that it is necessary to amend the sub-regulations (2) and (3) of Regulation 9 of Tamil Nadu Value Added Tax Appellate Tribunal Regulations, 2011 to effect distribution of work and confer territorial jurisdiction. The Principal Secretary to Government, Commercial Taxes and Registration Department, Chennai states that after getting necessary proposal from the Commissioner of Commercial Taxes and after obtaining orders from the Government in consultation with the advisory departments of Government, necessary orders will be issued by the Government.

9.The said submission of the learned Special Government Pleader on instructions is placed on record. I direct the Principal Secretary to Government, Commercial Taxes and Registration Department to expedite the process. The writ petition is allowed with this direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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

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(State Tax),
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Secretariat, Chennai – 9.

5.The Secretary,
Sales Tax Appellate Tribunal,
Chennai.

+1 CC to SPL GP (SR-15015[F] dated 01/04/2021)
+1 CC to M/s.A.SATHEESH MURUGAN, Advocate (SR-14972[F] dated 31/03/2021)

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RRS (10.05.2021) 5P 8C