IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.4378, 4379, 4380, 4381 and 4383 of 2022
and WMP.Nos.4497, 4499, 4501, 4502 and 4506 of 2022

C.Krishnamurthy
Partner of Tvl.Southern Steels
(GST No.33ADGFS0818D1ZH)
No.234/24, Sakthi Main Road
Opp.Muthu Mahal
Gobichettipalayam-638 452 ..Petitioner in all the above Writ Petitions

Vs

The Assistant Commissioner (ST)
Gobichettipalayam(C)
No.84/36, Bharathi Street,
Gobichettipalayam-638 452 ..Respondent in all the above Writ Petitions.

Common Prayer : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari to call for the records on the file of respondent herein, quash the impugned order of assessment passed by the respondent in (i) GST No.33ADGFS0181DIZH/2017-2018 Order No221701220573353 dated 17.01.2022; (ii) GST No.33ADGFS0181D1ZH/2018-2019 Order No.221901220575237 dated 19.01.2022; (iii) GST No.33ADGFS0181D1ZH/2019-2020 Order No.221901220575365 dated 19.01.2022; (iii) GST No.33ADGFS0181D1ZH/2020-2021 Order No.221901220575507 dated 19.01.2022 and (iv) GST No.33ADGFS0181D1ZH/2021-2022 (April 2021 to August 2021) Order No.221901220575658 dated 19.01.2022, as ex-facie illegal, violation of principles of natural justice and contrary to the provisions of the Tamil Nadu Goods and Service Tax Act, 2017.

For Petitioner : Mr.T.Ramesh Kutty
For Respondent : Mr..Richardson Wilson, Addl Govt.Pleader

COMMON ORDER

The prayer sought for herein is for a writ of certiorari to call for the records on the file of respondent herein and quash the impugned orders of assessment passed by the respondent dated

17.01.2022 and 19.01.2022 respectively, as ex-facie illegal, violation of principles of natural justice and contrary to the provisions of the Tamil Nadu Goods and Service Tax Act, 2017.

2. The petitioner is a registered dealer under the provisions of Goods and Service Tax Act, 2017, hereinafter referred to as "the GST Act" and Tamil Nadu Goods and Service Tax Act, 2017, hereinafter called as "the Act". The petitioner is engaged in the business of trading in construction materials goods such as TMT Bars, Cement etc., under the erstwhile TN VAT Act 2006 and now migrated to GST regime in 2017.

3. In respect of Assessment Years 2017-2018, 2018-19, 2019-2020, 2020-2021, 2021-2022 i.e., upto 30.09.2021, the respondent has issued a notice i.e., pre-assessment notice where time was given upto 08.01.2022 to the petitioner/assessee to reply and to produce documents if any in support of their case. On receipt of such notice dated 09.12.2021, the petitioner has sent a communication on 05.01.2022 requesting a further time of one month enabling the petitioner/assessee to collect the necessary documents and to produce. Though such a request has been made with reasons ie, for collection of documents, the said request was rejected through the rejection order dated 06.01.2022 which has been subsequently served on the petitioner. In the mean while, further communication also had been sent making the same request by the petitioner to the respondent and without considering the same, in view of the rejection order already been made on 06.01.2022, they proceeded to pass the order of assessment dated 19.01.2022.

4. Challenging the orders of assessment dated 19.01.2022, these writ petitions have been filed.

5. Heard Mr.T.Ramesh Kutty, learned counsel for the petitioner. He would submit that, in response to the letter dated 05.01.2022, the respondent has passed a rejection order dated 03.01.2022 but signed on 06.01.2022. Therefore, it shows total non application of mind on the part of the respondent.

6. That apart, insofar as the impugned assessment orders are concerned, in the computer sheet, which has been enclosed in each of the order, the date of the order has been mentioned in some cases as 17.01.2022 which was signed on 19.01.2022, however the date 17.01.2022 falls in a public holiday which was declared so by the State Government.

7. All these factors would go to show that as stated by the learned counsel for the petitioner, it is not only the case where opportunity sought for by the petitioner having not been considered in a proper perspective, but the respondent rejected

it outrightly, also the case where there is total non application of mind and the impugned orders were passed on different dates, which itself show that these are orders passed by the respondent confirming the proposal without giving proper opportunity to the petitioner/assessee to defend. Therefore it is a case of clear violation of principles of natural justice, hence, on that ground itself, the orders impugned are liable to be interfered with, he contended.

8. Per contra, the learned Additional Government Pleader appearing for the respondent would contend that it is not the first time the last date for appearance and production of documents was given upto 08.01.2021. Even prior to that, notices were given, time was granted to the petitioner to respond and those chances were not utilised by the petitioner/assessee. Therefore, the reasons sought for through their letter dated 05.01.2022 for giving further extension of time, since were not tenable, the Revenue/Respondent considered the same and rejected it of-course rightly.

9. Therefore, the plea now raised by the petitioner that no opportunity was given to the petitioner and the rejection order for extension of time made on 06.01.2022, is in total non application of mind, cannot be countenanced as the chance for giving reply having been given already to the petitioner, the extension application was rejected, therefore, it cannot be construed that the Revenue/respondent has violated the principles of natural justice.

10. 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.

11. Even though earlier notices were issued, subsequently, final notice was given by the Revenue on 09.12.2021 where they have directed the petitioner to explain the reasons for the aforesaid discrepancies pointed out in the notice on or before 08/01/2022 and it is further stated that if no explanation is received by the aforesaid date, it will be presumed that the petitioner/assessee have nothing to say in the matter and proceedings in accordance with law may be initiated against the petitioner without making any further reference to the petitioner in this regard. Therefore, the last date for response that was given to the petitioner is 08.01.2022.

12. Before the said period is completed, since the petitioner could not mobilise the documents or collect the same, he made a request on 05.01.2022 to give further time of 30 days, which request having been received by the respondent, they rejected it saying that earlier chance have already been given.

13. If earlier chance have already been given, the notice dated 09.12.2021 has no effect, that need not have been issued. Nevertheless they issued a notice dated 09.12.2021 where the date was fixed as 08.01.2022 on or before which, the petitioner/assessee was directed to explain the discrepancies.

14. In order to explain the discrepancies, certainly, the assessee requires necessary documents and in order to collect or procure the same, as it runs to consecutively for five five assessment years i.e., 2017-18 till 2021-22, the petitioner thought of asking further time of 30 days for which written request has been made on 05.01.2022. Therefore, in the considered opinion of this court, the said request ought to have been accepted, as normally this kind of request would be considered or accepted by the respondent/Revenue except in very extraordinary cases. Such a long rope since already been given and the Revenue construing that for only to take a time, extension is sought as a dilatory tactics and rejected the application for extension of time as not to entertain such kind of practice. But the present case cannot be construed as one such case for refusing to accept the request for further extension of time and therefore, such rejection, in the considered opinion of this court, cannot stand in the legal scrutiny.

15. As a sequel, the present orders of assessment dated 17.01.2022 and 19.01.2022 are passed as if that the petitioner has not given the reply to the show cause notice on or before the time given or permitted in this regard, which may not stand and therefore, for that reason, as it violates the principles of natural justice, this court is inclined to set aside the said orders of assessment for the purpose of remitting back the matters for reconsideration.

16. In that view of the matter, this court is inclined to dispose of the writ petitions with the following directions:-

(i) That the impugned orders in each of these writ petitions are hereby set aside. The matters are remitted to the respondent for reconsideration. While reconsidering the same within a period of two weeks from the date of receipt of a copy of this order, a day may be fixed by the respondent and that shall be communicated to the petitioner. On the date, as the same shall be treated as a Personal Hearing date, the petitioner without fail, shall appear before the respondent with relevant documents, inputs, Books of Accounts, etc., with reply or defense anything and place all those documents and reply before the respondent in support of the cause of the petitioners.

(ii) This court feels that a chance may also be given to the petitioner in the morning session on the hearing date, to peruse the records and documents on the files of the respondent, so that an effective reply and defence can be made by the petitioner and after perusal of the records and in addition to that with further records and inputs, if any, available with the petitioner, an effective defense may be made by the petitioner in the afternoon session and considering the same, final orders can be passed by the respondent thereafter.

With these directions, all these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Assistant Commissioner (ST)
Gobichettipalayam(C)
No.84/36, Bharathi Street,
Gobichettipalayam-638 452

+5ccs to Mr.K.Venkatasubramanian, Advocate, S.R.No.13450

+1cc to the Special Government Pleader, S.R.No.13721

W.P.Nos.4378, 4379, 4380,
4381 and 4383 of 2022

MT(CO)
CT 10/06/2022