IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WRIT PETITION NOS.4190 & 4193 OF 2019
AND
W.M.P.NOS.4704 & 4710 OF 2019

Sri Munipachaiyappan Textiles Private Limited
Rep.by its Managing Director A.M.Munuswamy
No.339/1, Iyeppedu Village, Sholinghur-631 102
Vellore District.

...Petitioner in both W.Ps.

-Vs-

The State Tax Officer
Arakkonam Assessment Circle
Arakkonam – 631 008.

...Respondent in both W.Ps.

Prayer in W.P.No.4190/2019 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in Order in TIN No.33581740583 / 2016-17 dated 27.11.2018 and the consequential Notice RC/A3/35/2019 (RC/64158/13-14, 14-15, 15-16 and 16-17) dated 11.01.2019 passed / issued by the respondent and quash both the order and the notice as illegal and arbitrary.

Prayer in W.P.No.4193/2019 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in Order in TIN No.33581740583 / 2017-18 dated 27.11.2018 passed by the respondent and quash both the order and the notice as illegal and arbitrary.

For Petitioner : Mr.Joseph Prabakar
For Respondents : Mr.C.Harsha Raj
Additional Government Pleader(Taxes)

O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the records in Order in TIN No.33581740583 / 2016-17 dated 27.11.2018 and the consequential Notice RC/A3/35/2019

(RC/64158/13-14, 14-15, 15-16 and 16-17) dated 11.01.2019 and Order in TIN No.33581740583 / 2017-18 dated 27.11.2018 passed / issued by the respondent and quash both the orders and the notice as illegal and arbitrary.

2. The issue relates to the assessment years 2016-17 and 2017-18, which were under the TNVAT regime ie., Tamil Nadu Value Added Tax Act (In short the 'VAT Act').

3. According to the petitioner, return has been filed under Section 22(1) of the Act and the same having been accepted, subsequently the respondent wanted to revise it by reopening the same under Section 27 of the Act. However, without giving any opportunity of personal hearing before passing the order under Section 27, the assessment order for the year 2016-17 has been passed and that is under challenge in W.P.No.4190 of 2019. Insofar as the assessment year 2017-18 is concerned, even the order under Section 22(4) of the Act was passed without giving an opportunity of personal hearing as well as show cause notice. Therefore, on that ground the learned counsel for the petitioner wants to assail both the orders in these writ petitions.

4. Heard Mr.C.Harsha Raj, learned Additional Government Pleader appearing for the respondent, who relied upon the following paragraph of the counter affidavit.

> " In respect of penalty under Section 1-A of the CST Act 1956, it will attract only on interstate purchases and penalty shall not exceed 1 ½ times of the tax that would have been levied. But both the CST as well as 150% of the tax due as penalty has been levied and opportunity of personal hearing has not been given."

5. Relying upon the same, he would state that both the CST as well as 150% of the tax due as penalty has been levied and opportunity of personal hearing has not been given.

6. I have considered the said submission of the learned Government Counsel appearing for the respondent, as culled out from the counter affidavit and perused the materials placed before this Court.

7. Apart from the merits of the case, the petitioner's side since has raised a ground that no opportunity of personal hearing was given and in one case not only personal hearing but also show cause notice was also not given, on that ground alone this Court feels that the impugned order can be successfully assailed.

8. The reasons stated by the respondent in the counter affidavit as quoted herein above for not giving an opportunity of personal hearing cannot be countenanced and therefore the reason for not giving an opportunity of personal hearing can be rejected.

9. In view of the above, the following orders are passed in these writ petitions.

- Both the impugned orders in these writ petitions are set aside and the matter is remitted back to the respondent for reconsideration.
- While reconsidering the same, a show cause notice fixing a date for personal hearing shall be specifically given to the petitioner in each of the case, and
- On that date, the petitioner shall appear without fail and put forth their case or defence and thereafter it is open to the Revenue to pass order of assessment if need arises.
- The entire exercise as indicated above shall be undertaken with the cooperation of the petitioner by the respondent within eight weeks from the date of receipt of a copy of this order.

10. With the above observations and directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KST

To

The State Tax Officer
Arakkonam Assessment Circle
Arakkonam - 631 008.

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.17366
+1cc to the Special Government Pleader(Taxes), S.R.No.17901

W.P.Nos.4190 & 4193 of 2019

MG(CO)
RLP(24/03/2022)