IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.4357, 4359, 4362, 4365 & 4367 of 2022
and
W.M.P.Nos.4477, 4478, 4481, 4484 & 4485 of 2022

M/s.Kaviya Traders,
Rep.by its Proprietor S.Sudhakar,
No.83/40, Dr.Dharmalingam Road,
Dharmapuri - 600 023. ... Petitioner in all W.Ps

Vs

1. The State Tax Officer Inspection Cell-IV,
   Office of the Deputy Commissioner (ST)
   Intelligence Dicision, 2nd Floor, Room No.216,
   Commercial Taxes Building, Pitchards Road,
   Hasthampatti, Salem - 636 007.

2. The Deputy Commissioner (ST)
   Intelligence, Commercial Taxes Building,
   Hasthampatti, Salem - 636 007.

3. The Joint Commissioner (ST)
   Intelligence Wing, Commercial Taxes Building,
   Hasthampatti, Salem - 636 007.

4. The Assistant Commissioner (ST)
   Dharmapuri Assessment Circle,
   Dharmapuri. ... Respondents in all W.Ps

Prayer in W.P.No.4357 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the respondent in GSTIN:33EDWPS4044H1Z2/2017-18 dated 29.11.2021 and quash the same and direct the respondents to furnish the copies of the documents relied upon by them and accept the objections to be filed by the petitioner firm.

Prayer in W.P.No.4359 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the respondent in GSTIN:33EDWPS4044H1Z2/2018-19 dated 29.11.2021 and quash the same and direct the respondents to furnish the copies of the documents relied upon by them and accept the objections to be filed by the petitioner firm.

Prayer in W.P.No.4362 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the respondent in GSTIN:33EDWPS4044H1Z2/2019-20 dated 29.11.2021 and quash the same and direct the respondents to furnish the copies of the documents relied upon by them and accept the objections to be filed by the petitioner firm.

Prayer in W.P.No.4365 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the respondent in GSTIN:33EDWPS4044H1Z2/2020-21 dated 29.11.2021 and quash the same and direct the respondents to furnish the copies of the documents relied upon by them and accept the objections to be filed by the petitioner firm.

Prayer in W.P.No.4367 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the respondent in GSTIN:33EDWPS4044H1Z2/2021-22 dated 29.11.2021 and quash the same and direct the respondents to furnish the copies of the documents relied upon by them and accept the objections to be filed by the petitioner firm.

For Petitioner : Mr.M.Hariharan
[in all W.Ps]

For Respondents : Mr.Richardson Wilson
Additional Government Pleader
[in all W.Ps]

COMMON ORDER

The issue raised in these writ petitions is one and the same. Hence, with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and are being disposed of by this common order.

2. The petitioner is a dealer under the 4th respondent in the GST Regime i.e., Tamil Nadu Goods and Service Tax Act, 2017 [in short, 'TNGST Act']

3. In respect of the Assessment Years 2017-18, 2018-19, 2019-20, 2020-21 and also in the Assessment Year 2021-22, for a period from 01.04.2021 to 31.08.2021, the Revenue wanted to reassess the issue by invoking Section 74 of the said Act.

4. In this context, on 01.10.2021, a Show Cause Notice was issued to the petitioner, directing the petitioner to appear for Personal Hearing on 01.11.2021 with reply and supporting documents and inputs, if any.

5. However, the petitioner since could not collect those documents pertaining to the query raised in the Show Cause Notice in time and to appear on 01.11.2021, in anticipation of the same, the petitioner on 26.10.2021, has sent a communication to the second respondent that the particulars are to be gathered from the seller of the petitioners and buyers relating to notice mentioned dealers. Therefore, they requested one month time, which may be granted to the petitioner for collecting those documents and to submit the same during the Personal Hearing.

6. Since there was no reply or response to the said request made by the petitioner dated 26.10.2021, the petitioner has sent further such request by way of reminder on 24.11.2021, where, also the petitioner requested 20 days time.

7. Though these two requests having been made, which have been sent through registered post to the second respondent's address, they would have definitely reached the second respondent, however, without considering the said request made by the petitioner for grant of such time asked for, the first respondent proceeded to finalize the assessment and passed orders on 29.11.2021, whereby the proposal has been confirmed. Aggrieved over the same, these writ petitions in respect of each of the aforestated different Assessment Years have been filed.

8. Stating the aforestated, Mr.M.Hariharan, learned counsel appearing for the petitioner would contend that, in the order impugned, it has been stated by the first respondent that, a notice was issued to the dealer, calling for their objections and to appear for Personal Hearing, but they neither appeared for Personal Hearing nor they filed any objection. Hence, the proposal is confirmed.

9. These reasons cited by the first respondent, which is reflected in the impugned order, stating that the petitioner / assessee has not at all responded to the Show Cause Notices, by

not considering or unmindful of the said requests dated 26.10.2021 and 24.11.2021, vitiates the entire proceedings as it violates the Principles of Natural Justice. Hence, on that ground, the learned counsel for the petitioner seeks indulgence of this Court against these impugned orders.

10. Per contra, learned Additional Government Pleader appearing for the respondents would submit that, normally if time is asked for any genuine reason beyond the time already given in the Show Cause Notice, that could be considered objectively and granted. But, in this context, whether such a request has been made and the same had reached the office of the respondents before they passed the order on 29.11.2021 is not known.

11. Be that as it may. Now, it is the grievance of the petitioner that, an opportunity to respond to the Show Cause Notices and a Personal Hearing should be given and without which, since orders are passed, according to the petitioner, after giving such an opportunity, certainly, the issue would be reconsidered and passed. Therefore, at this stage, the matter can be remitted back to the first respondent only for such an exercise, where, it should be made as a condition precedent that, no further time shall be asked for by the petitioner except the time to be allowed by this Court, requiring the petitioner to appear before the first respondent/Revenue on a particular date to be mentioned or indicated in this regard without fail.

12. I have considered the said rival submissions made by both parties and have perused the materials placed before this Court.

13. As has been rightly pointed out by the learned counsel appearing for the petitioner that, on 26.10.2021 as well as on 24.11.2021, two communications have been sent by the petitioner to the second respondent, seeking for some more time to collect the documents and to report.

14. Since the said requests have been made through registered post, definitely, it would have reached the office of the second respondent, for which, the respondent can either accept such request or reject it. In this context, the learned Additional Government Pleader has fairly submitted that, when such kind of request has been made for extension of time, if it

is for genuine reasons, the Revenue would not say no to the extension and anyhow in this case, if any further time is required, at the most, two weeks time may be granted, within which, a date may be fixed for Personal Hearing, on that day without fail, let the petitioner/assessee shall appear and produce the documents and inputs as well as reply.

15. In view of the said stand taken by the respondents and on consideration of the afore-stated factual matrix, where, the request having been made by the petitioner, the present reason cited in the impugned orders as if the petitioner has not responded to the notice may not hold good. On that ground, this Court is inclined to interfere with the impugned orders for the purpose of remanding the same for reconsideration.

16. Accordingly, the following orders are passed in these writ petitions:

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

(ii) In this context, since it was requested by the learned counsel for the petitioner that, already documents and records of the petitioner have been filed and which are in the possession of the first respondent/Assessing Authority, a reasonable time in the morning session on the hearing date may be given to the petitioner to peruse the records, so that an effective reply and defence can be made by the petitioner, this Court feels that a chance may also be given to the petitioner in the morning session by the Assessing Officer, before whom, the petitioner is directed to appear and after perusal of the records and in addition to that, with further records and inputs, if any, available with the petitioner, an effective defence may be made by the petitioner in the afternoon session. Considering the same final order can be passed by the first respondent thereafter.

17. With these directions, all these writ petitions are disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The State Tax Officer Inspection Cell-IV,
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4. The Assistant Commissioner (ST)
   Dharmapuri Assessment Circle, Dharmapuri.

+5ccs to Mr.M.Hariharan, Advocate, S.R.No.13582 to 13586

+1cc to the Special Government Pleader (Taxes), S.R.No.13720

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4365 & 4367 of 2022

CA(CO)
UMA(16/06/2022)