IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.4398 & 4400 of 2022
and W.M.P.Nos.4529 & 4530 of 2022

M/s.Blessing Store,
Represented by its Proprietor,
No.22, New Market 1st Lane,
West Tambaram, Chennai - 600 045. ...Petitioner in both WPs

Vs.

Assistant Commissioner(ST),
Tambaram Assessment Circle,
Integrated Commercial Taxes Building,
Nandanam, Chennai - 600 035. ...Respondents in both Wps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in his revision Orders in TIN 33060881546/2014-15 and TIN 33060881546/2015-16 dated 06.12.2021 and to quash the order passed therein and to direct the respondent to provide personal hearing as per the letter dated 01.10.2021 and giving exemption for the non-taxable goods and to assess the taxable goods under Section 3(4) of TNVAT Act by following the circular instructions of the Commissioner of Commercial Taxes in Circular No.15 of 2007 (VAT Cell/41809/2007) dated 29.08.2007 as per Amendment Act 21 of 2007.

For Petitioner : Mr.C.Baktha Siromoni
(in both Wps)

For Respondents : Mr.V.Prasanth Kiran
(in both Wps) Government Advocate

COMMON ORDER

The prayer sought for herein in both writ petitions is for a writ of certiorarified mandamus, to quash the proceedings of the respondent in his revision order in TIN 33060881546/2014-15 and TIN 33060881546/2015-16 dated 06.12.2021 and to pass order therein and to direct the respondent to provide personal hearing as per the letter dated 01.10.2021 and giving exemption for the non-taxable goods and to assess the taxable goods under Section

3(4) of TNVAT Act by following the circular instructions of the Commissioner of Commercial Taxes in Circular No.15 of 2007 (VAT Cell/41809/2007) dated 29.08.2007 as per Amendment Act 21 of 2007.



2. Since the issue raised in both the writ petitions is one and the same, these writ petitions were heard together and are disposed of by this common order.

3. In respect of the Assessment Years 2014-15 and 2015-16, there was an assessment order as well as order of revision, where, according to the petitioner, a reply was given by the petitioner dated 01.10.2021, which was received on 04.10.2021, but was not considered by the respondent/Revenue. Therefore, on that ground, the present order has been passed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') by the impugned order dated 06.12.2021.

4. Challenging this order, Mr.C.Baktha Siromoni, learned counsel appearing for the petitioner submitted that, though a detailed reply has been given, where a request for personal hearing also had been made, no such personal hearing had been given and only considering the reply, by stating that necessary documents have not been filed by the petitioner/ assessee, since the present order under Section 84 of the Act has been passed, the said order is vitiated, because, despite the specific request having been made in this regard by the assessee to get a personal hearing, the same was not given to the petitioner/assessee.

5. Heard Mr.V.Prasanth Kiran, learned Government Advocate appearing for the respondent, who would submit that, already more than one time, such a personal hearing notice was given, which, opportunity was not utilized by the petitioner and this time, Section 84 rectification order is passed only by taking into account the reply given by the petitioner dated 04.10.2021. Therefore, now, the said reply, since has been taken into account, the present plea raised by the petitioner that, no opportunity has been given, which includes the personal hearing, may not be justifiable. Therefore, on that ground, the petitioner cannot seek indulgence of this Court to assail the order impugned.

6. 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.

7. Insofar as the opportunity of being heard is concerned, if the personal hearing is sought for by the assessee, that should be given by the respondent and here, already more than one occasion, though personal hearing was

given, but in those communications, no specific date of personal hearing was mentioned.

8. Especially, after receipt of the reply dated 04.10.2021, where, the petitioner has asked for the personal hearing, this Court feels that the respondent/Revenue ought to have given such an opportunity of personal hearing to the petitioner, since the same has not been given before passing the order impugned even under Section 84 of the TNVAT Act. For the said purpose of giving the personal hearing to the petitioner, this Court feels that the impugned order can be set aside and the matter can be remanded back to the respondent.

9. In view of the above, this Court is inclined to pass the following orders in these writ petitions:

- That the impugned orders are set aside and the matters are remitted back to the respondent for reconsideration. While reconsidering the same, a specific date may be fixed by the respondent for the purpose of personal hearing and it should be intimated in advance to the petitioner. On receipt of such communication, on the date of personal hearing, the petitioner without fail, shall appear and put forth their case.
- It is made clear that no further opportunity would be given except this one chance, it should be utilized by the petitioner.

10. With these observations and directions, both the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

sp/mp

To

Assistant Commissioner(ST),
Tambaram Assessment Circle,
Integrated Commercial Taxes Building,
Nandanam, Chennai - 600 035.

+1cc to Mr.C.Baktha Siromoni, Advocate, S.R.No.13593
+1cc to the Special Government Pleader, S.R.No.13722

W.P.Nos.4398 & 4400 of 2022

NK(CO)
SB(16/03/2022)