IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.7525 of 2022 and
W.M.P.Nos.7525 & 7527 of 2022

M/s.Sri Ganapathy & Co.,
Rep. By its Partner – C.Gnanaprakash
No.352-A, Gandhipuram,
Udumalai Road, Dharapuram – 638 661
Tirupur District. ... Petitioner

Vs

The State Tax Officer,
Dharapuram,
Tirupur District. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records on the file of the respondent in its impugned proceedings made in TIN:33083023101/2014-15 dated 15.03.2021 and to quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.R.Siddharth
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Certiorari calling for the records on the file of the respondent in its impugned proceedings made in TIN:33083023101/2014-15 dated 15.03.2021 and to quash the same as illegal and contrary to the scheme of the Act.

2. The petitioner is a dealer under the erstwhile Tamil Nadu Value Added Tax Act, 2006 (in short 'the Act'). In respect of assessment year 2014-15 as well as 2015-16, though the deemed

assessment was over under Section 22(2), subsequently, in order to reopen the same, by way of revisional assessment under Section 27, notices were issued. According to the learned counsel for the petitioner, the notices issued for both assessment orders have been replied on 27.06.2019. Insofar as the assessment year 2015-16, already orders were passed under Section 27, including penalty which was the subject matter in the writ petition, which was heard along with the batch of writ petitions in W.P.No.8751 of 2020 etc. batch, where, the learned Judge of this Court by order dated 12.07.2021 on the ground of giving personal hearing, had remanded all those matters back to the Assessing Authority for reconsideration.

3. Therefore, the learned counsel appearing for the petitioner Mr.S.Rajasekar would contend that, if there was a combined reply dated 27.06.2019 for both assessment years including the assessment year 2014-15, that has not been taken into account while passing the impugned order dated 15.03.2021. Therefore, on the said ground, this impugned order also is liable to be interfered with and the matter can be remitted back to the respondent for reconsideration by giving a personal hearing to the petitioner.

4. Heard Mr.R.Siddharth, learned Government Advocate appearing for the respondent, who would submit that, it is not only before passing the impugned order dated 15.03.2021 but also another time on 24.02.2021 a revised notice has been issued, where, the petitioner had been given a personal hearing before the office of the respondent on or before 05.03.2021 and to file his objection, if any, within 7 days on receipt of the notice. Despite these notices, since the petitioner has not availed the opportunity to appear before the respondent for personal hearing and no documents in support of the claim made by the petitioner since have been filed, the Assessing Authority has no other option except to proceed with the assessment and accordingly, the present assessment order has been passed. Hence, the ground of violation of principles of natural justice or non giving the option of personal hearing does not arise in this case, therefore, the judgment referred to by the petitioner may not be applicable to the present facts of the case.

5. 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.

6. Whatever be the reason, insofar as the reply to the show cause notice is concerned, on 27.06.2019, a reply has been

given, which according to the petitioner counsel, is a combined reply for both assessment years 2014-15 and 2015-16.

7. When that being so, if that reply is to be taken for the purpose of assessment year 2015-16, as directed by this Court in the order cited supra dated 12.07.2021, the same logic would apply and the reason would apply to the present case also for the assessment year 2014-15 and therefore, on that ground, this Court feels that, the impugned order can be set aside and the matter can be remanded, for reconsideration, to the respondent.

8. Accordingly, this Writ Petition is disposed of with the following orders:

(i) That the impugned order is set aside and the matter is remitted back to the respondent for reconsideration. While reconsidering the same, the reply given by the petitioner dated 27.06.2019 as well as any further reply, input or documents to be supplied by the petitioner, for which, two weeks time atleast by indicating the date by the respondent be given and after hearing the petitioner on the date to be mentioned for personal hearing and after considering the documents and reply and further input anything to be supplied by the petitioner, order shall be passed by the respondent.

(ii) It is made clear that, on the date to be mentioned above by the respondent, if the petitioner assessee does not come forward to appear for personal hearing or have not given any input, based on the available records orders can be passed by the respondent.

9.With this observation and direction, this Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

Sgl
To

The State Tax Officer,
Dharapuram,
Tirupur District.

+1cc to M/s.R.Hemalatha, Advocate Sr.22544
+1cc to the Special Government Pleader Sr.21887

W.P. No.7525 of 2022

pl[co]
srg 12/04/2022