IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WRIT PETITION NOS.7645 AND 7651 OF 2022
AND
W.M.P.NO.7650 & 7656 OF 2022

M/s.Sugan Auto Spares,
Represented by its Proprietor,
Mr.Anand, No.27/56,
A.N.S. Complex, Kotagiri,
Nilgiri District - 643 217. ... Petitioner in both W.P's

-Vs-

The Commercial Tax Officer,
Kotagiri Assessment Circle,
Kotagiri, Nilgiris District. ... Respondent in both W.P's

PRAYER IN W.P.NO.7645 OF 2022:-

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN 33912561070/2015-2016 dated 07.01.2022 and quash the same as passed contrary to the principles of natural justice and further direct the respondent to grant the petitioner a reasonable opportunity to file objections and thereafter pass fresh order in accordance with law.

PRAYER IN W.P.NO.7651 OF 2022:-

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN 33912561070/2014-2015 dated 07.01.2022 and quash the same as passed contrary to the principles of natural justice and further direct the respondent to grant the petitioner a reasonable opportunity to file objections and thereafter pass fresh order in accordance with law.

IN BOTH W.P'S

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.R.Siddharth
Government Advocate

C O M M O N O R D E R

Since the issue raised in these writ petitions is one and the same, with the consent of the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondent, these writ petitions were taken up together, heard and disposed of by this common order.

2. The petitioner is a dealer under the erstwhile Tamil Nadu Value Added Tax Act (In short 'the VAT Act'). For the assessment year 2014-15 and 2015-16, though the deemed assessment was over under Section 22(2) of the Act, subsequently it was reopened for scrutiny, wherein, according to the learned counsel for the petitioner, as per Section 3(4) of the Act, the petitioner, by invoking the said provision, had calculated the tax by compounding it to half per cent because it was the claim of the dealer that the annual turn over is less than Rs.50 Lakhs.

3. However, it is the case of the Revenue that, it is not less than Rs.50 Lakhs and it is more than Rs.50 Lakhs, therefore, Section 3(4) ought not to have been invoked by the dealer. Therefore, in this regard in order to revise the assessment for fixing the correct rate of tax to be levied on the petitioner, the Revenue had issued a show cause notice and a personal hearing was also given on 09.12.2021.

4. On that date, the petitioner or his representative, having appeared before the Revenue, had given a letter of request that if 30 days more time is given to the petitioner, he will be in a position to produce the necessary documents and books of accounts to substantiate the contention that, the annual turn over of the petitioner for the relevant assessment year did not exceed Rs.50 Lakhs, therefore, he is entitled to claim fixed rate of tax as provided under Section 3(4) of the Act.

5. Despite the said request having been made seeking 30 days time, which was getting expired only by 08.01.2022, before which, on 07.01.2022, the order of assessment has been passed. Therefore, on the ground of not giving proper opportunity of hearing and to produce the books of accounts as claimed by the

petitioner, the petitioner challenged both the orders in these writ petitions.

6. Mr.P.Rajkumar, learned counsel for the petitioner, having stated the aforesaid factual matrix as projected by him, would seek the indulgence of this Court against the assessment orders.

7. Heard Mr.R.Siddharth, learned Government Advocate appearing for the respondent, who would submit that, as sought for by the petitioner one month time was also given, but since within the one month time nothing came forward from the petitioner and no documents have been filed by the petitioner, the Revenue had no other option except to proceed further with the available records and therefore the present orders have been passed and those orders do not require any interference.

8. I have considered the submissions made by the learned counsel appearing on either side and have perused the materials placed on record.

9. The only ground raised by the petitioner for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, challenging the impugned order of assessment dated 07.01.2022 in both the cases, according to the learned counsel for the petitioner is that, proper opportunity was not given to the petitioner before passing the impugned order.

10. In this context, the 30 days time sought for by the petitioner, though was given by the Revenue, that has not been intimated to the petitioner. Therefore, whether time was given to the petitioner or not was not known to the petitioner and therefore he could not file the documents.

11. Moreover, the learned counsel for the petitioner would contend that, assuming that the time was given starting from 09.12.2021 that would end only on 08.01.2022, however one day before ie., on 07.01.2022 the impugned orders have been passed. Therefore, it cannot be construed to be proper opportunity given to the petitioner.

12. Though such a hyper-technical plea is raised by the petitioner, that may not be justifiable because, at least 29 days time has been given to the petitioner as has been sought for by the petitioner for 30 days, and the present reason stated by the learned counsel for the petitioner that the 30 days time given from 09.12.2021 should have been intimated to the petitioner may also not be a good ground.

13. Be that as it may. Now in order to comply with the said procedure of principles of natural justice as sought for by the petitioner since 30 days time has already been given and one day prior to that the impugned orders have been passed, this Court is of the view that further 3 to 5 days time can be given to the petitioner, before which if the petitioner comes forward to produce the necessary documents, as according to the learned counsel for the petitioner, those documents are readily available with the petitioner, after giving such opportunity to produce those documents, the Revenue can proceed further.

14. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following order.

- That the impugned orders are directed to be kept in abeyance till 18.04.2022.
- On or before 18.04.2022, in any day it is open to the petitioner to appear before the respondent Assessing Officer to produce the relevant documents or books of accounts or supporting documents etc., in support of the case of the petitioner, pursuant to the notices already received by him.
- Once such documents are produced, based on which, after considering the same, the Revenue can pass a revised order. Otherwise, if no documents are produced before 18.04.2022, it is open to the Assessing Authority to proceed further and pass an order confirming the impugned orders dated 07.01.2022.

15. With the above observations and directions, both 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 Commercial Tax Officer,
Kotagiri Assessment Circle,
Kotagiri, Nilgiris District.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.22492
+1cc to the Special Government Pleader (Taxes), S.R.No.22870

W.P.Nos.7645 & 7651 of 2022

RSV(CO)
PBS/12/04/2022