IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No. 21752 of 2022 and
WMP.Nos. 20765 & 20766 of 2022

Sankara Traders
Rep. by its Proprietor:
Saurabh Munot
64/1, Bazaar Street,
Chidambaram-608 001. ...Petitioner

Vs.

The Commercial Tax Officer (ST)
(State Tax Officer),
Chidambaram-1. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari calling for the records on the files of the Respondent herein in TIN 33774442559 / 2014-15 dated 02.03.2022 signed on 13.05.2022 confirming the order dated 4.2.2022 and to quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.Haja Nazrudeen
Additional Advocate General
Assisted by
: Mr.M.Venkateswaran
Special Government Pleader

ORDER

Read this order in conjunction with order dated 02.09.2022 that makes reference to extracts of earlier orders dated 23.08.2022 and 30.08.2022, reading as follows:

Read this order in conjunction with order dated 23.08.2022 and directions issued on 30.08.2022 that read as follows:

23.08.2022:

Mr.R.Siddharth, learned Government Advocate accepts notice for the respondent and seeks some time to obtain instructions and file a counter.

2. The challenge in this matter is to order of assessment dated 04.02.2022 passed in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the assessment year 2014-15.

3. At the outset, learned counsel for the petitioner points out that the petitioner has approached this Court earlier seeking and obtaining relief as against an assessment for the identical period.

4. There was a visit by the officials of the Enforcement Wing, based upon which an assessment had been framed originally, that came to be challenged before this Court in W.P.No.17492 of 2021. That Writ Petition came to be disposed by order dated 25.08.2021 in the following terms:

> *5. Therefore, on the short point of Madras Granite and Narasus principles infraction, captioned writ petition is disposed of by passing the following order:*
>
> *a) The impugned Assessment order dated 7.7.2021 bearing reference TIN-33774442559/2014-15 is set aside;*
>
> *b) The impugned Assessment Order is set aside solely on the ground of infraction of Narasus and Madras granite principles (not making the assessment independent of the Enforcement Wing report) without expressing any view or opinion on the other aspects of the matter;*
>
> *c) The respondent shall furnish photocopies of 4/6 http://www.judis.nic.in W.P.No.17492 of 2021 the D-7 records referred to in the impugned order to the writ petitioner under due acknowledgement on or before 15.09.2021.*
>
> *d) Post furnishing the aforementioned photocopies i.e., post 15.09.2021, Respondent shall make the assessment afresh independent of the proposals given by the Enforcement Wing in tune with Madras Granite / Narasus principle.*
>
> *e) The assessment afresh shall be made on its own merits and in accordance with law.*
>
> *f) The aforesaid exercise of assessment afresh shall be completed as expeditiously as the business of the respondent would permit, but in any event within two months from 15.09.2021 i.e., on or before 15.11.2021.*

5. Pursuant to this order, the petitioner had sought and obtained the D7 records on 28.10.2021. The order of the learned single Judge is clear to the effect that photo copies of D7 records shall be furnished to the petitioner on or before 15.09.2021, despite which the officer has done nothing in this regard. The explanation tendered is that the request was made by the petitioner only on 28.10.2021, pursuant to which the documents have been furnished. This explanation is not acceptable in light of the categoric *direction of this Court.*

6. Thereafter, notice was issued on 01.11.2021 with an opportunity to appear on 15.11.2021. The petitioner has filed a reply on 11.11.2021 seeking an extension of time to file a reply till 06.12.2021. There was no intimation by the officer as to whether the request of the petitioner has been accepted or not, neither was a date fixed for personal hearing and the officer has merely passed an order on 04.02.2022.

7. The entirety of the procedure followed by the officer is in blatant violation of the time frame set out by this Court on 25.08.2021. The intention, as is clear from order dated 25.08.2021, is that the assessment should be completed on or before 15.11.2021. It was thus incumbent upon the authority to have adhered to the time frame fixed or else seek a modification of the same.

8. As against the order of assessment dated 04.02.2022, the petitioner files an application for rectification under Section 84 of the Act. This has come to be dismissed vide impugned order dated 02.03.2022 without even a hearing afforded to the petitioner. This order is also impugned in this Writ Petition.

9. Great reliance is placed by the learned counsel for the petitioner on an order passed by this Court in the case of Sankara Global Marketing

Services (W.P.Nos.9764, 9769, 9770 and 9774 of 2019 dated 02.12.2021), a sister concern of the petitioner. In that matter, 4 assessments for the periods 2011-12, 2012-13, 2013-14 and 2015-16 had been set aside solely on the ground that personal hearing was not afforded.

10. The argument advanced by the learned Government Advocate was to the effect that a personal hearing was not mandatory under Section 27 of the Tamil Nadu Value Added Tax Act, 2007. This is a vexed issue, which has attained finality in a slew of Writ Petitions and Circulars issued by the Commercial Taxes Department reiterating that effective opportunity including personal hearing.

11. When a subsequent batch of Writ Petitions in the case of the present petitioner came up for hearing before me relating to periods 2012-13, 2013-14 and 2015-16, both learned counsel, i..e, learned counsel for the petitioner as well as the respondents, had relied upon the order passed in the case of Sankara Global Marketing Services (supra) and thus the impugned orders of assessment in the case of the present petitioners were also set aside, in the interests of consistency.

12. This Court is tired of dealing with challenges to assessment orders wherein violation of principles of natural justice forms the main argument. The Court has been repeatedly reiterating the necessity and *importance of affording an opportunity to file objections and hearing the petitioner prior to passing of assessment orders. This is not a new phenomenon, but finds place in Circulars issued by the Special Commissioner over the years reiterating the same requirement.*

13. Insofar as there appears to be scant regard to compliance of directions issued by this Court, this Court apprehends that perhaps the orders passed do not reach the attention of the officers at all. That apart, it is necessary for the head of the Institution to keep a track and put in place controls to ensure that proceedings are conducted in a proper and legalistic fashion.

14. Since 06.06.2022, when I commenced sitting in this Roster, there have been 17 Writ Petitions, the details of which are given below, that have been admitted/disposed solely on the aspect of violation of principles of natural justice. This is unacceptable. Even though the Country has transitioned into the era of Goods and Services Tax, the spectre of non-adherence to due process, haunts us and the Court is still flooded with matters relating to Value Added Tax regime, specifically relating to violation of principles of natural justice.

S.No	Writ Petition No.	Date of order
1	10636 of 2022	06.06.2022
2	11606 of 2022	06.06.2022

3	6184 to 6186 of 2019	09.06.2022
4	11425 of 2019	14.06.2022
5	11589 of 2019 etc. batch	14.06.2022
6	13242 of 2019	16.06.2022
7	3408 of 2019	23.06.2022
8	9900 of 2021	15.06.2022
9	4594 to 4598 of 2019	11.07.2022
10	17522 of 2022 etc. batch	12.07.2022
11	17706 of 2022	13.07.2022
12	33482 of 2019	10.08.2022
13	28548 of 2019 etc. batch	16.08.2022
14	20585 of 2022	11.08.2022
15	20625 of 2022	12.08.2022
16	28769 & 28771of 2019	16.08.2022
17	21343 of 2022	18.08.2022

15. While the Court would appreciate challenges on substantial issues of law and spirited defence being put up in that respect by the Department, matters of this nature, that too, recurring, add no value whatsoever. To ensure that the authority concerned appreciates the gravity of the situation, let the Principal Secretary/Commissioner of Commercial Taxes be present before this Court on 30.08.2022 at 12.00 noon.

16. List on 30.08.2022. Counter/written instructions by then with an advance copy served upon the petitioner.

30.08.2022:

.....

5. In fine, the following directions are issued:

(i) A detailed affidavit to be accepted by this Court on 02.09.2022 setting out the measures that are proposed to be taken in this regard and

modes of implementation thereof.

(ii) A period of twelve weeks will be granted from 02.09.2022 to enable the issuance of a Circular containing instructions for implementation by authorities.

2. As against the period of 12 weeks that has been granted, the Commissioner, in the affidavit dated 01.09.2022, filed in compliance with the earlier orders, has undertaken to issue a detailed Circular on the aspect of adherence to principles of natural justice within one (1) month from today.

3. As far as present Writ Petition is concerned, learned Additional Advocate General would accede to the position that the impugned order has been passed without affording any opportunity of hearing to the petitioner and would assure the Court that the petitioner will be heard and orders passed in line with the principles of natural justice, even prior to the next date of hearing.

4. Let the needful be done in this regard and a copy of the order produced on the next date of hearing.

5. List on 11.10.2022 in the same position for production of orders and Circular.

2. As regards the circular that was to be passed by the Principal

Secretary, Commissioner of Commercial Taxes, a copy of Circular No.12/2022 is placed on file, wherein the Commissioner has issued instructions to Assessing/Adjudicating Authorities in regard to the proper manner in which assessments are to be framed. Classes are also being conducted by experts to instruct and guide the Assessing Authorities in the proper manner of framing of assessments.

3. Learned counsel for the petitioner submits that the Assessing Authority has heard the petitioner and passed order dated 30.09.2022 and with the passing of this order this writ petition may be closed. This is recorded and this writ petition is closed. Connected miscellaneous petitions are closed. No costs.

11.10.2022

Index : Yes/No
Speaking Order
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DR.ANITA SUMANTH,J.
Ska

To

The Commercial Tax Officer (ST)
(State Tax Officer),
Chidambaram-1.

W.P.No. 21752 of 2022 and
WMP.Nos.20765 & 20766 of 2022

11.10.2022