IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.1805 of 2023 &
W.M.P.No.1922 of 2023

Sri Durga Impex,
represented by its Proprietor,
S.Balasubramanian,
9, Narasingapuram Street,
Chintadripet,
Chennai - 600 002. ... Petitioner

vs.

The Assistant Commissioner (ST) FAC,
Chintadripet Assessment Circle,
Greams Road, Annex Building, I Floor,
Chennai - 600 006. ...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorari calling for the records of the respondent in TIN No.3310058264/2012-13 dated 05.08.2022 and quash the same as arbitrary and illegal.

For Petitioner : Mr.P.R.Kumar

For Respondent : Mr.Amirtha Dinakaran,
Government Advocate

ORDER

The petitioner has challenged the assessment order dated 05.08.2022 passed under the provisions of the TNVAT Act, 2006 on the ground of violation of principles of natural justice.

2. Heard Mr.P.R.Kumar, learned counsel for the petitioner and Ms.Amirtha Dinakaran, learned Government Advocate appearing for the respondent.

3. The petitioner contends that without issuing any notice and without affording any personal hearing to the petitioner, the impugned assessment order has been passed. The petitioner also contends that they have closed down their business long time back in the year 2009 itself and therefore, they will be put to hardship, if the impugned assessment order is enforced.

4. On the last hearing date, learned Government Advocate appearing for the respondent sought time to produce a copy of notices sent by the respondent to the petitioner before passing the impugned assessment order. Today learned Government Advocate appearing for the respondent has

placed before this Court the copy of hearing notices sent by the respondent to the petitioner along with the returned covers.

5. As seen from the hearing notices and the returned covers, it is found that the petitioner has refused to receive the notices. In fact, as seen from the returned covers, an endorsement has also been made by the postal authorities stating that the intimation has been delivered. It is also not disputed by the learned counsel for the petitioner that the address of the petitioner mentioned in the postal covers sent by the respondent enclosing the hearing notices is the correct address of the petitioner.

6. The only contention, the learned counsel for the petitioner is now raising, is that since the petitioner has closed down their business and the proprietor is residing elsewhere, the hearing notices ought to have been sent to the residence of the proprietor. According to him, having not sent to the petitioner's residential address, the impugned assessment order has to be quashed on account of violation of principles of natural justice. He would also submit that as seen from the impugned assessment order, the notices sent to the petitioner by the respondent was returned only with an endorsement, "left" and it does not disclose that the intimation was

delivered to the petitioner as represented by the learned Government Advocate appearing for the respondent before this Court today.

7. Admittedly, the notices were sent to the correct address of the petitioner. The assessment year pertains to 2012-13 and at this point of time, after a lapse of more than ten years, entertaining this writ petition will not arise as the petitioner has not exercised the statutory appellate remedy available to him under section 51 of the TNVAT Act 2006.

8. Under Section 27 of the General Clauses Act, once a notice is sent to the correct address of a person, it amounts to deemed service. When the petitioner has not disputed the fact that the petitioner carried on business in the address mentioned in the returned covers produced by the respondent, Section 27 of the General Clauses Act gets attracted and it amounts to deemed service of notice.

9. In view of the above, this Court is not inclined to interfere with the impugned assessment order. However, considering the fact that the petitioner has closed down the business as early as in the year 2009 itself, the petitioner must be allowed to exercise his statutory appellate remedy under section 51 of the TNVAT Act, 2006. This Court deems it fit to grant sufficient time to the petitioner to mobilise the funds for the pre-deposit

amount for filing the statutory appeal under section 51 of the TNVAT Act, 2006. This Court is of the considered view that it would suffice if three months time is granted for the petitioner to file the statutory appeal as against the impugned assessment order before the statutory appellate authority under section 51 of the TNVAT Act, 2006.

10. For the foregoing reasons, this writ petition is **disposed of** by directing the petitioner to file the statutory appeal as against the impugned assessment order dated 05.08.2022 before the statutory appellate authority under section 51 of the TNVAT Act, 2006,, within a period of three months from the date of receipt of a copy of this order. On receipt of the same, the statutory appellate authority shall entertain the said appeal, if the same is filed within the stipulated time as stated supra, without reference to limitation and pass appropriate order as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

09.02.2023

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Index: Yes/No
Speaking order/Non-Speaking Order
Neutral Citation : Yes/No

To

The Assistant Commissioner (ST) FAC,
Chintadripet Assessment Circle,
Greams Road, Annex Building, I Floor,
Chennai - 600 006.

ABDUL QUDDHOSE, J.
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