IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.3163 of 2021
and W.M.P. Nos.3591 and 3593 of 2021

Tvl.Arumugasamy Alloys Metal Suppliers,
Sf.No.32, Balaji Industrial Estate,
Keeranatham, Coimbatore. ...Petitioner

Vs.

The Assistant Commissioner (ST),
Ganapathy Circle, Coimbatore. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in order dated 26.02.2019 in TIN:33172208882/2015-16 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Ms.Amirtha Dinakaran
Government Advocate

ORDER

The writ petition is filed challenging the order of assessment for the assessment year 2015-16 on the premise that the notice and the impugned order of assessment has not been served in compliance with the method and the manner prescribed under Rule 19 of the Tamil Nadu Value Added Tax Rules, 2007 (hereinafter referred to as "TNVAT Rules") which reads as under:

> ***"19. Service of notices, summons or orders.-***
>
> *(1) The service on a dealer of any notice, summons or order under the Act or these rules may be effected either electronically or manually in any of the following ways, namely:-*
>
> *(a) by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative.*
>
> *Explanation. Endorsement by person who delivers the notice, summon or order of having tendered or given will be proof for the purpose of this sub-rule; or*
>
> *his authorised;*
>
> *(b) if such dealer or his manager or agent or the legal prac titioner appointed to represent him, or representative is not found, by giving or tendering it to any adult member of his family; or*
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> *(c) by sending it to the address of the dealer by registered post; or*
>
> *(d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence in the presence of two independent witnesses.*
>
> *[(e) By electronic mode, through the registered electronic user account of the dealer in the website of the Commercial Taxes Department or through the registered electronic mail address of the dealer.]"*
>
> *(2) Where any Hindu undivided family, firm or other associa- tion of persons is partitioned, dissolved or discontinued, notice, summons or order issued under the Act or these Rules may be served on any member of the Hindu undivided family, any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before such partition, dissolution or discontinuance."*

2. It is submitted by the learned counsel for the petitioner that they were not served with any notice prior to passing of the impugned order. It is submitted that the impugned order in its reference column refers to a notice dated 26.10.2015 and a personal hearing notice dated 30.08.2018. At page 2 of the impugned order of assessment, it is stated that a personal hearing notice was issued and the same was returned as unserved and therefore the assessment of the dealer was completed. It is submitted by the learned counsel for the petitioner that in the counter, reference is made to an alleged notice dated 21.03.2018 calling for personal hearing on 10.10.2018 and as the petitioner had not responded, the assessment order came to be passed. The relevant portion of the impugned order and the counter is extracted hereunder:

> *Impugned order dated 26.02.2019:*
>
> *"A personal hearing notice was issued to the dealer calling for their objections with documentary evidences within 15 days of receipts of the notice, but the notice returned and unserved, therefore the assessment of the dealer for the year 2016-17 under TNVAT Act 2006 is follows...."*
> *Counter affidavit:*
>
> *"In this regard, it is submitted that the Respondent had issued notice on 21.03.2018 and had called for personal hearing on 10.10.2018. There is no need for another notice. The Respondent had based on the available records passed the assessment order, since the petitioner had not submitted any reply for the assessment year 2015-16. The assessment order copy was duly served on the petitioner on 05.03.2019. A xerox of*

served copy of the assessment order is submitted herewith for favour of action."

2.1. From the above extracts, it is evident that there is an apparent contradiction between the counter and the order of assessment inasmuch as the counter attempts to justify the assessment order being made by placing reliance upon a notice dated 21.03.2018, the assessment order on the other hand makes no reference to the said notice, on the other hand states that as the personal hearing notice was returned as unserved, the impugned order of assessment came to be passed. Assuming that the statement contained in the assessment order is correct, the Respondent ought to have affixed the notice in some conspicuous place at his last known place of business/ residence of the petitioner, which admittedly was not done. Thus, the mode of service provided under Rule 19 of TNVAT Rules had not been complied with. It is trite law that service of notice/ order relates to jurisdiction, failure to effect valid service would render the proceedings lacking jurisdiction[*]. When the contradiction between the assessment order and the counter was pointed out

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i)Commissioner of Sales Tax v. Shrimal Sakharchand, 1984 SCC OnLine Bom 446, 1984 57 STC 224;
ii)Gopal Oil Mills v. Assessing Authority, Ludhiana, 1984 SCC OnLine P&H 837,(1984) 57 STC 314;
iii)S.K. Manekia v. Commissioner of Sales Tax, 1977 SCC OnLine Bom 275, (1977) 39 STC 426;
iv)Jaipur Udyog Ltd. v. Commercial Taxes Officer, 1979 SCC OnLine Raj 231, (1979) 44 STC 456.

to the learned counsel for the Respondents she would fairly submit that there is in fact a discrepancy and that they would redo the assessment after providing the petitioner an opportunity. In view of the same, the impugned order is set aside and the petitioner is granted liberty to submit its reply treating the impugned order as notice within a period of 4 weeks from the date of receipt of a copy of the order. If any such objection is filed within the time stipulated above, the Respondent shall proceed to consider and pass orders within a period of 6 weeks from the date of receipt of such objections, if any, in accordance with law and after affording a reasonable opportunity.

3. With the above direction, the writ petition stands disposed of. No costs. Consequently, the connected writ miscellaneous petitions are closed.

14.07.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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To:
The Assistant Commissioner (ST),
Ganapathy Circle, Coimbatore.

MOHAMMED SHAFFIQ, J.

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