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W.P.No.6783 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.6783 of 2023
W.M.P.No.6881 of 2023

M/s.Texonic Instruments,
Rep. By its Partner,
9, Athipattan Street, Chennai – 600 002.
Now at Aarti Arcade, Flat No.6,
2nd Floor, Old No.96, New No.114,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

.. Petitioner

VS

1.The Assistant Commissioner (ST)
Chintadripettai Assessment Circle,
No.1, Greaves Road,
Chennai – 600 006.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying to issue a writ of certiorari calling for the records of the first
respondent in TIN. 33840580223/2010-11 to 2012-13 and quash
the notice dated 03.02.2023 passed therein.

For Petitioner : Mr.R.L.Ramani
Senior Counsel
for Mr.B.Raveendran

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader



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ORDER

Heard Mr.R.L.Ramani, learned Senior Counsel for Mr.B.Raveendran, learned counsel on record for the petitioner and Mr.C.Harsha Raj, learned Additional Government Pleader for the respondents.

2. The challenge is to a personal hearing notice dated 03.02.2023. The petitioner is on a second round of litigation. The petitioner had challenged the orders of assessment that had been based on a clarification issued by the Commissioner of Commercial Taxes dated 11.12.2007. Both the clarifications and the assessment orders had been the subject matters of W.P.No.22263 of 2013 that had been disposed on 12.07.2018. The assessments were set aside and remanded for fresh consideration.

3. As regards the clarification, the learned Judge opined that being a clarification issued in the case of a third party it did not bind the petitioner. At paragraph 8 of that order, he states as follows:-

"8. The first step that there has to be undertaken is to examine as to whether the product will fall within Entry 68 of Part B of First Schedule to the Tamil Nadu Value Added Tax



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Act, 2006, which deals with Information Technology Product. For testing this question, the respondent has to necessarily examine the product, its application and all other technical specifications before arriving at a conclusion. Having arrived at a conclusion that is an Information Technology Product, the respondent should consider as to under which entry the product would fall, whether Entry 19 or Entry 20 as submitted by the petitioner. Hence for the above reasons, the impugned Assessment orders have to be redone. "

4. Thus and seeing as the clarification dated 11.12.2007 has no relevance in the petitioner's case, the proper course of action is for the authority to take the assessment up for finalization, de novo. The present personal hearing notice has been issued nearly five years post order dated 12.07.2018, though such delay has not been raised as a ground of challenge by the petitioner.

5. Inter-alia, the Officer has said that he has granted personal hearing earlier and requests the petitioner to appear before him on 11.02.2023 with connected records. The grievance of the petitioner is that the direction at paragraph 8 has not been complied with. He also disagrees that the Officer has granted any personal hearing in the matter prior to that fixed under the impugned notice.



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6. Thus, in such circumstances, let the petitioner appear before the Assessment Officer on 16.03.2023 at 10.30 a.m without expecting any further notice seeing as the matters are delayed as it is. After hearing the petitioner, orders shall be passed de novo within a period of four weeks from date of personal hearing.

7. While making it clear that the petitioner shall cooperate, it is made equally clear that the assessments if not completed within the time frame as above, would lapse seeing as (i) we are today in the era of GST and (ii) bearing in mind the substantial delay on the part of the authorities in taking matters up for adjudication post order of this Court passed in 2017.

8. This writ petition is disposed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

06.03.2023

Index:Yes/No
Neutral Citation:Yes
ssm



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To

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DR. ANITA SUMANTH,J.

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