IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.9671 of 2023
and WMP No.9724 of 2023

YCH Logistics (India) Private Limited
rep. by its Authorized Signatory
Debasish Mohanty ... Petitioner

Vs

The Assistant Commissioner (ST)
Kodambakkam Assessment Circle
4th Floor, PAPJM Annexe Building,
1, Greams Road, Chennai – 600 006. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the files of the respondent herein in TIN/33371424236/2015-16 dated 2.01.2023, and direct the respondent herein to pass orders on their petition dated 28.02.2023 sent by speed post on 06.03.2023.

For Petitioner : Mr. Sirram
for Mr.N.Inbarajan
For Respondent : Mr.V.Prashanth Kiran
Government Advocate

O R D E R

Mr.V.Prashanth Kiran, learned Government Advocate accepts notice for the respondent and is armed with instructions to proceed with the matter even at this stage. Hence, bearing in mind the limited compass within which the matter falls and having regard to the submission of Mr.Sriram, learned counsel for the petitioner and the learned Government Advocate, final orders are passed by consent expressed by both learned counsel.

2. The petitioner has challenged an order of assessment dated 02.01.2023 primarily on the ground of violation of principles of natural justice on the premise that its reply dated 28.12.2022 to Final Notice dated 05.12.2022 has not been taken into consideration in passing the impugned order.

3. It is an admitted position that reply dated 28.12.2022 has been received by the respondent only on 03.01.2023, by which time, the impugned order has been passed on 02.01.2023.

4. The impugned order has been preceded by a notice dated 24.03.2022, wherein the officer calls upon the petitioner to both file objections with evidence and to be heard within 15 days from date of receipt of the notice. Admittedly, the petitioner has filed a reply dated 25.05.2022 wherein they specifically sought an opportunity of personal hearing, followed by a communication dated 27.05.2022, also reiterating the request for personal hearing as contained in letter dated 25.05.2022 enclosing various annexures.

5. Dissatisfied with the reply, the officer has issued yet another final notice on 05.12.2022 calling for further details. The officer states therein that a final opportunity was granted to file a valid objection with documentary

evidences within 7 days of the receipt of the notice. The petitioner has also been afforded an opportunity of being personally heard at the office of the respondent.

6. However, in both instances, under notice dated 24.03.2022 and final notice dated 05.12.2022, though opportunity of personal hearing has been extended, there is no date or time stipulated.

7. Time and again, this Court has reiterated the necessity for fixing of personal hearing on a specific date and time in order to ensure that a fruitful and effective hearing ensues. However, it is seen that the respondent continues to issue open ended notices without stipulation of any date and time. While the move on the part of the respondent to conduct a hearing at any time when the assessee appears is appreciated, it is still necessary, in order to abide by the principles of natural justice and due process, to ensure that a personal hearing is fixed by date and time to maintain integrity in procedure.

8. For the aforesaid reasons, which have been repeatedly brought to the notice of the officers in a series of orders passed by this Court, the impugned order of assessment dated 02.01.2023 is set aside. Thus, there is no necessity to address the application for rectification under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 that the petitioner has filed post receipt of the order of assessment.

Dr.ANITA SUMANTH,J.

9. The petitioner will appear before the officer on 06.04.2023, without expecting any further notice in this regard, treating the impugned order as a notice of hearing, along with all/any materials in its possession in support of its stand. After hearing the petitioner, orders shall be passed de novo within a period of four (4) weeks from date of personal hearing.

10. This Writ Petition is allowed as is the Miscellaneous Petition. No costs.

29.03.2023

Index : Yes / No
Speaking/non-speaking Order
Neutral Citation: Yes/No
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To

The Assistant Commissioner (ST)
Kodambakkam Assessment Circle, 4th Floor,
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1, Greams Road, Chennai – 600 006.

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