IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.No.33229 of 2022
and
W.M.P.Nos.32651 & 32652 of 2022
in
W.P.No.33229 of 2022

Vinayagamoorthy Tyres
Represented by its Parnter
P.K.Srinivasan .. Petitioner

Vs.

1. Deputy State Tax Officer
Kancheepuram (Rural) Assessment Circle
First Floor, Commercial Taxes Building
Collectorate Campus
Kancheepuram - 631 501.

2. Deputy Commissioner (ST)
Zone-XII
Collectorate Campus
Kancheepuram - 631 501. .. Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent passed in Order

No.221802220624140 dated 04.04.2022 and quash the same as the impugned proceedings of the first respondent is in violation of principles of natural justice and dis-regard to the provisions of the TNGST Act/Rules 2017 and further direct the first respondent to re-do the adjudication in accordance with law.

For Petitioner	:	Mr.N.Murali
For Respondents	:	Mr.V.Prashanth Kiran Government Advocate (Taxes)

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ORDER

This order will now dispose of the captioned main writ petition and captioned writ miscellaneous petitions thereat.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the listing on 12.12.2022, a scanned reproduction of which is as follows:

W.P.No.33229 of 2022
& W.M.P.No.32652 of 2022

M.SUNDAR, J.,

Captioned writ petition has been filed assailing the 'proceedings' captioned 'Summary of the order' dated 04.04.2022 bearing reference No.ZD3304220011 48U [hereinafter 'impugned summary of order' for the sake of convenience and clarity]. Subject matter of captioned writ petition arises under the 'The Central Goods and Services Tax Act, 2017' [hereinafter 'C-G & ST Act' for the sake of convenience and clarity], which kicked in on 01.07.2017 and *inter alia* subsumes 'Tamil Nadu Value Added Tax Act, 2006 (Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of brevity]

2. The petitioner is a partnership firm. It is a registered dealer under the erstwhile TNVAT Act. Proceedings were initiated owing to alleged difference in GSTR 1 & 3B on one side and GSTR 3B & 2A on the other.

3. The aforementioned proceedings culminated in impugned summary of order, which is under Section 73 of C-G&ST Act.

4. Adverting to Section 73(4), learned counsel for writ petitioner submits that a duty is cast on the first respondent to give an opportunity of hearing when an adverse decision qua a dealer is contemplated. In the case on hand, the impugned summary of order is adverse to the writ petitioner and opportunity of hearing is the issue. Interestingly and intriguingly, it has been

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averred in the writ affidavit more particularly Ground (I) that it is not known whether personal hearing was provided to the petitioner. It has also been averred that this is owing to the fact that what has been described as 'full-fledged portion of adjudication order' has not been uploaded and only summary of order has been uploaded. *Prima facie*, this Court is of the view that it is for the petitioner-assessee to say whether he was given an opportunity of personal hearing.

5. Be that as it may, it is also contended that on scrutiny of returns qua Section 61 of C-G&ST Act, Rule 142 of 'the Central Goods and Services Tax Rules, 2017' (C-G&ST Rules, 2017) kicks in and the same has been given a go by.

6. Mr. Prashanth Kiran, learned Government Advocate accepted notice on behalf of both the respondents. Learned Revenue counsel pointed out that the writ petitioner has a statutory remedy by way of an appeal under Section 107 of C-G&ST Act qua impugned summary of order.

7. There is no disputation that the petitioner has neither preferred an appeal nor sent communication either within the prescribed period of limitation (3 months from date of communication of impugned summary or order) or the condonable period (1 month thereafter) of limitation qua statutory appeal under Section 107 C-G&ST Act. To be noted, impugned summary of order dated

04.04.2022 has been instantaneously uploaded on the same day. The prescribed period of limitation (three months) closes on 04.07.2022 and the condonable period (1 month thereafter / therefrom) elapsed on 04.08.2022. However, the writ petitioner submits that he has filed a rectification petition under Section 161 of CGST Act on 15.09.2022 which also is a way beyond the prescribed period qua a rectification application at the instance of an affected party.

8. Learned Revenue counsel sought time to get instructions and revert to this Court, more particularly on the question as to whether the order that should have preceded the impugned summary of order was uploaded in the portal or served on any other permissible mode under due acknowledgement on any day prior to 04.04.2022 or on any day between 04.01.2022 and today.

9. List the matter in the 'Admission Board' to enable the Revenue counsel to get instructions. Registry to show the name of Revenue counsel in the cause list in the next listing. The first respondent who has made the impugned summary of order to remain present in Court tomorrow.

List in the Admission Board tomorrow. List on 13.12.2022.

12.12.2022

gpa

Note to office : Upload forthwith.

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3. Aforementioned 12.12.2022 proceedings of this writ Court shall now be read as an integral part and parcel of this order. This means that the short forms, abbreviations and short references used in the aforementioned proceedings shall continue to be used in the instant order also for the sake of convenience and clarity.

4. Today, Mr.N.Murali, learned counsel on record for the writ petitioner and Mr.Prashanth Kiran, learned Revenue counsel on behalf of the respondents are before this writ Court.

5. Learned Revenue counsel, adverting to the aforementioned earlier proceedings dated 12.12.2022 and more particularly paragraph No.8 thereat submits, on instructions, that the order that should have preceded the impugned summary of order was neither uploaded nor served (under acknowledgment) in any other manner permissible in law on a day prior to 04.04.2022. It is also submitted that it has not been served until this day.

6. The above drops the curtains on the captioned writ petition.

7. In the light of the stated position of the respondents, the prayer in the captioned main writ petition cannot but be acceded to. Prayer in the captioned main writ petition acceded to. Captioned Writ Petition is disposed of as allowed albeit making it clear that if the respondents are to initiate proceedings afresh, it is open to the respondents to do so and all the rights and contentions of both sides are preserved if proceedings are initiated afresh by the respondents. Consequently, connected Writ Miscellaneous Petitions are also disposed of as closed. There shall be no order as to costs.

11.01.2023

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

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M.SUNDAR, J.,

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To

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