IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **02.01.2023**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.34580 of 2022
&
W.M.P.No.34019 of 2022
in
W.P.No.34580 of 2022

M/s.Sarvesh Textiles
No.118, Karumathampatti
Elachipalayam
Coimbatore – 641 569
Represented by its Proprietor
Mr.Subramaniam Somasundaram .. Petitioner

Vs.

Assistant Commissioner
Tirupur Central-II Assessment Circle
No.16, Emberar building
Indira Nagar
Avinashi Salai
Tiruppur – 641 003 ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the respondent herein leading to passing of the impugned Assessment Order Vide No.33162464531/2013-14 dated 14.05.2015 and quash the same.

For Petitioner : Mr.S.Sathyanarayanan

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader (Taxes)

O R D E R

Captioned writ petition arises under the erstwhile 'Tamil Nadu Value Added Tax Act, 2006 (Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of brevity, convenience and clarity].

2. An order dated 17.04.2015 bearing reference 33162464531/2013-14 being an order in revision i.e., a revisional assessment order under Section 27 of erstwhile TNVAT Act has been called in question.

3. Short point urged by Mr.S.Sathyanarayanan, learned counsel for writ petitioner is, the writ petitioner-dealer did not receive 'show-cause notice' ['SCN'] i.e., pre-revisional show-cause notice much less was the writ petitioner given personal hearing.

4. Mr.C.Harsha Raj, learned Additional Government Pleader (Taxes) accepted notice on behalf of sole respondent, who made the impugned order.

5.Owing to the narrow compass on which the captioned matter turns, with the consent of learned counsel on both sides, main writ petition was taken up.

6. Learned Revenue counsel, on instructions, draws the attention of this Court to a representation dated 02.11.2020 and submits that writ petitioner-dealer was aware of the impugned order as early as in November 2020 but has gone into slumber.

7. The response of learned counsel for writ petitioner is, across the board order of Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 which excludes the period from 15.03.2020 to 28.02.2022 owing to 'Coronavirus pandemic and consequent lock down' which is collectively referred to as 'Covid-19 situation'. Learned counsel submits that this is a situation which the writ petitioner could neither portend nor presage. This submission is acceptable to this writ Court owing to facts and circumstances of this case.

8. Be that as it may, as regards the revisional assessment legal drill under Section 27 of erstwhile TNVAT Act is concerned, this writ Court in ***State Bank of India officers*** case law, ***[State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner, Chennai-1 in W.P.No.22634 of 2019 order dated 01.08.2019],*** has held that personal hearing is statutorily imperative unlike a revision under Section 22(4). This order was upheld by a Hon'ble Division Bench of this Court vide an order dated 16.12.2019 in W.A.No.4073 of 2019. The

sequitur is, personal hearing is imperative for a legal drill in a Section 27 revision. In the case on hand, as the writ petitioner has the benefit of across the board Covid exclusion as a one-off case, captioned writ petition is entertained.

9. The sequitur is, the following order is passed:

a) The impugned order being order dated 17.04.2015 bearing reference TIN:33162464531/2013-14 shall be treated as pre-revisional 'show-cause notice' ['SCN' for brevity];

b) Writ petitioner shall send a reply to the SCN on or before 18.01.2023;

c) Thereafter, the respondent shall hold a personal hearing in his office i.e., the office address given in the cause title on 27.01.2023 at 03.00 p.m;

d) The respondent shall thereafter pass orders afresh as expeditiously as his official business would permit but in any event within a fortnight from the date of personal hearing i.e., on or before 10.02.2022;

e) The order passed afresh in the *de novo* revisional drill shall be communicated to the writ petitioner under due acknowledgement within five working days from the date of disposal.

Captioned writ petition disposed of with aforementioned directives. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

02.01.2023

Index: yes/no
gpa

To

Assistant Commissioner
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M.SUNDAR, J.,

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