BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.2932 of 2024
and
WMP(MD)No.2930 of 2024

Tvl.Hotel Jeeva,
Rep. by its Proprietor
D.Rajaguruvan .. Petitioner

v.

The Assistant Commissioner (ST),
Virudhunagar II Circle,
C.T. Building, NH 7 Main Road,
Virudhunagar – 626 001. .. Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the impugned assessment order on the file of the respondent vide ASST.No. 33965741624/2017-18 dated 26.12.2023 and quash the same.

For Petitioner : Mr.Raja Karthikeyan

For Respondent : Mr.A.Baskaran,
Additional Government Pleader

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ORDER

The petitioner is running a Hotel and Lodge at Virudhunagar and also got permission to sell IFML Liquor in his Hotel. He has filed this writ petition as against the order of assessment passed by the respondent dated 26.12.2023 on the sole ground that the respondent has not provided sufficient opportunity of personal hearing to the petitioner, as directed by this Court in WP(MD)Nos.15989 to 15991 of 2023, dated 04.07.2023.

2.Learned Counsel for the petitioner submitted that the respondent has already passed an order of assessment on 12.09.2022 and the same was challenged before this Court in WP(MD)Nos.15989 to 15991 of 2023. This court, by order dated 04.07.2023, set aside the earlier assessment order with a direction to the respondent to provide an opportunity of personal hearing to the petitioner. In compliance of the same, the respondent has issued a notice for personal hearing dated 04.12.2023 fixing the enquiry on

13.12.2023. The petitioner received the said notice on 09.12.2023 and by communication dated 11.12.2023, the petitioner requested for postponing the enquiry by 31 days. The same was not considered by the respondent and no order has been passed. In the meantime, the petitioner has submitted another representation on 19.12.2023. While so, the impugned assessment order has been passed without providing an opportunity and without considering the representation dated 19.12.2023. Therefore, the learned Counsel requested for one more opportunity of personal hearing.

3.He further submitted that the issue with regard to the liability of the petitioner in paying third point sale, when the TASMAC has already paid the taxes to the Government, is pending consideration before the Hon'ble Supreme Court in SLP.No.27666 of 2016, etc., batch.

4.Learned Additional Government Pleader, on instructions, submitted that the petitioner was provided with sufficient opportunity. However, by one way or the other, the petitioner is dragging on the proceedings. Notice was issued on 04.12.2023 and the same was received by the petitioner on 09.12.2023. The enquiry was fixed on 13.12.2023, however, the petitioner failed to appear for the enquiry and therefore, the respondent has proceeded with the available materials.

5.He further submitted that the earlier assessment order dated 12.09.2022 was set aside by this Court only for providing one more opportunity of personal hearing to the petitioner. Therefore, the subsequent notice was issued on 04.12.2023. Even for this notice, the petitioner has not responded. He further submitted that the petitioner is having an appeal remedy u/s.58 of the TNVAT Act before the Appellate Tribunal.

6.This Court considered the rival submissions made on either side and perused the available materials.

7.The petitioner has not filed the returns properly, for which, a pre-assessment notice was issued on 28.09.2021. The petitioner has filed his reply on 25.10.2021. Thereafter, the respondent has issued further assessment notice on 06.12.2021. For this notice, the petitioner has filed his reply on 15.12.2021 that he was not able to file monthly online returns. The petitioner was given with another opportunity for filing the returns on or before 23.02.2022, by notice dated 10.02.2022. The petitioner has submitted a reply on 18.02.2022 seeking time of one more month for filing the returns that he is not in a position to contact his Auditor. Accordingly, further time was also granted. The petitioner neither filed his returns nor filed any reply. Therefore, the respondent proceeded further and passed the order of assessment on 12.09.2022.

8.This assessment order dated 12.09.2022 was set aside by this Court on the ground that the opportunity of personal hearing was not provided to the petitioner. Therefore, by notice dated 04.12.2023, the petitioner was called-for for enquiry on 13.12.2023. This time, the petitioner claimed that he got held up at Chennai and sought one month time.

9.The conduct of the petitioner appears to be not genuine. Though the respondent has provided sufficient opportunity, the petitioner has not utilized the same and by citing one reason or the other, he is prolonging the proceedings. Therefore, this Court is not inclined to entertain this writ petition on the grounds of violation of natural justice.

Accordingly, this writ petition is dismissed. If the petitioner is having any valid grounds as against the impugned order of assessment, other than the violation of natural justice, it is open to him to file an appeal before the appropriate Appellate Tribunal, if so advised. No costs. Consequently, connected miscellaneous petition is closed.

Index	:	Yes / No	**29.02.2024**
NCC	:	Yes / No	
Internet	:	Yes	

gk

To

The Assistant Commissioner (ST),
Virudhunagar II Circle,
C.T. Building, NH 7 Main Road,
Virudhunagar – 626 001.

B.PUGALENDHI, J.

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