IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.4215 & 4216 of 2017
and
W.M.P.Nos.4375 & 4376 of 2017

M/s.Malladi Drugs & Pharmaceuticals Limited,
Represented by its General Manager - Accounts,
Mr.V.Krishnakumar,
No.9, GST Road, St. Thomas Mount,
Chennai - 600 016. ... Petitioner in both WPs

Vs

The Assistant Commissioner (CT)
Nandambakkam Assessment Circle,
No.17, Second Street,
Loganathan Nagar, Choolaimedu,
Chennai - 600 094. ... Respondent in both WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the respondent and quash the assessment proceedings in CST/717354/2010-11 and CST/717354/2013-14 respectively dated 30.12.2016 passed by the respondent as illegal and arbitrary and direct the respondent to pass fresh orders by providing an opportunity of personal hearing to the petitioner and consider removal of erroneous tax claims.

For Petitioner in both WPs : Mr.N.Senthil Kumar

For Respondent in both WPs : Mr.K.Venkatesh Government Advocate

COMMON ORDER

Heard Mr.N.Senthil Kumar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent. With the consent on either side, the writ petition is taken up for final disposal.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 as well as the CST Act, 1956. In this writ petition, the petitioner challenges the order of assessment under the CST Act for the year 2010 - 2011 and 2013 -2014 dated 30.12.2016. The only ground on the which the impugned order has been challenged is by contending that this assessment order has been passed in violation of the principles of natural justice without adequate opportunity to the petitioner.

3.Initially at the time when the writ petitions were filed, it appears that on instruction from the consultant, it was stated that no pre-assessment notice was issued to the petitioner. This according to the petitioner is a factual mistake as notice was issued and the petitioner submitted a reply for all the five assessment orders by reply dated 18.05.2016 wherein they have requested for the personal hearing to be given and also agreed to submit all the documents. Apart from that, the petitioner also referred to certain decisions in support of their contention that the Input Tax Credit cannot be reversed under Section 19(5) (c) of the Tamil Nadu Value Added Tax Act. This letter dated 18.05.2016 shown to have been acknowledged by the office of the respondent on 19.05.2016 as per the endorsement Letter Delivery Book.

4.On a reading of the impugned orders of assessment, it is seen that there is no reference to the show cause notice issued, neither the petitioner's written reply dated 18.05.2016 nor the legal issue has been decided in a proper manner. Thus, it is sufficient to hold that the impugned proceeding has been passed in utter violation of the principles of natural justice. Therefore, the matter has to be remanded back for fresh consideration.

5.Accordingly, the Writ Petitions are disposed of, by directing the petitioner to treat the impugned proceeding as show cause notice and submit their objections within a period of 15 days from the date of receipt of a copy of this order. On such objections being received, the respondent shall afford an opportunity of personal hearing to the petitioner, peruse the documents and re-do the assessment in accordance with law. Till such orders are passed, no coercive action shall be initiated against the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Assistant Commissioner (CT)
Nandambakkam Assessment Circle,
No.17, Second Street,
Loganathan Nagar, Choolaimedu,
Chennai - 600 094.

+2cc's to Mr.G.Vijayakumar, Advocate, S.R.No.46529
+1cc to the Special Government Pleader(T), S.R.No.46492

W.P.Nos.4215 & 4216 of 2017

VD(CO)
CA(27/07/2017)