IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2018

CORAM :

The Hon'ble Mr. Justice T.S.Sivagnanam

W.P.No. 28953 of 2017
and
W.M.P.No.31176 of 2017

M/s. Accel Frontline Limited,
Rep. By its Authorised Signatory
Mr.R.Neelakantan
No.75, Nelson manickam Road,
Aminjikarai, Chennai - 600 006.
.. Petitioner

Vs

1. The Assistant Commissioner (CT),
   Valluvarkottam Assessment Circle,
   No.10, Palaniappa Malagai,
   Greams Road, Chennai - 600 006.

2. The State of Tamilnadu
   Rep. by its Secretary to Government,
   Commercial Taxes & Registration Department,
   Fort St George, Chennai - 600 009.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in TIN/33031501150/2012-13 dated 25/09/2017, and to quash the same and further to direct the first respondent to exclude the exempted turnover relating to Annual Maintenance contract, on which, Service tax is paid and restore the reversed Input Tax Credit on the inter-state sales in view of Substitution of section 19(2)(v) and simultaneous omission of section 19(5)(c) by Act. No.5 of 2015 of the Tamilnadu Value Added Tax Act (Amedment) 2015.

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For Petitioner : Mr.V.Sundareswaran
For Respondents : Mrs.G.Dhanamadhri
Government Advocate

O R D E R

Heard Mr.V.Sundareswaran, the learned counsel appearing for the petitioner and Mrs.G.Dhanamadhri, the learned Government Advocate for the respondents.

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2. When the Writ Petition came up for admission on 13.11.2017, the learned counsel appearing for the petitioner submitted that, for the revision notice, dated 18.05.2017, the petitioner had filed objections on 20.06.2017, which was acknowledged by the first respondent on 28.06.2017, by endorsing in the Letter Delivery Book. Further, it was submitted that, the Senior Manager of the petitioner, one Thiru.Thiruvengandam, appeared before the first respondent on 04.08.2017, and submitted documents in box files.

3. The petitioner's case was that, those documents still remain with the first respondent, and the impugned assessment order has been passed, without perusing the document and without affording an opportunity of hearing to the petitioner to explain those documents. Therefore, the petitioner filed a Petition under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'TNVAT Act') dated 27.10.2017, which was received on 31.10.2017.

3.1 The learned Additional Government Pleader, who accepted notice on behalf of the respondents, on the said date, was directed to get instructions, as to why, the matter should not be remanded for fresh consideration. Subsequently, the Writ Petition came up for hearing on 15.11.2017, and on the said date, the learned Special Government Pleader appeared in the matter, and she submitted that all the documents given by the petitioner have been acknowledged by the first respondent, and they have been taken into consideration while passing the impugned assessment order. To this submission, the learned counsel appearing for the petitioner stated that, he has serious reservation, and invited the attention of this Court to the representation, dated 27.10.2017, received by the first respondent on 31.10.2017, in which, the petitioner specifically stated that, their Senior Manager appeared before the first respondent on 04.08.2017 and submitted documents in box files. Therefore, the respondents were directed to file a counter affidavit. Accordingly, counter affidavit has been filed by the first respondent on 07.12.2017, from which, it is seen that the first respondent has reiterated the stand taken in the assessment order, justifying his action.

3.2 When the case came up for hearing on 09.01.2018 (yesterday), this Court directed the learned Government Advocate, to ascertain as to whether the documents still remain with the first respondent, and whether the Petition filed under Section 84 of the TNVAT Act was received by the first respondent, and directed the matter to be listed today (i.e., 10.01.2018).

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4. As per the afore said direction, the matter has been listed today, and the learned Government Advocate received instructions and stated that the documents still remain with the first respondent, and the Petition is also pending. However, it is the case of the first respondent that the documents are only sample documents and do not pertain to all Annual Maintenance Contract (for short, AMC contract). However, the learned counsel appearing for the petitioner submitted that all the relevant documents with regard to all AMC contracts have been furnished, and if one opportunity is given to the petitioner, to explain the matter before the first respondent, the entire issue will be solved, especially, when the first respondent has granted similar relief to the petitioner for the subsequent assessment year.

5. Thus, considering the above factors, this Court is of the view that, the assessment should be redone and the Assessing Officer, while doing so, shall do it with an open mind, and equally, the authorized representative of the petitioner should appear before the first respondent and co-operate in the assessment proceedings, without harbouring any prejudice.

6. Accordingly, this Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration, who shall afford an opportunity of personal hearing to the authorized representative of the petitioner, peruse all the documents, if any additional documents are required, that may be called for, and pass a speaking order, on merits and in accordance with law, without being influenced any of the observations made in the impugned assessment order, as the same is set aside by this Court today, in this order. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Assistant Commissioner (CT),
   Valluvarkottam Assessment Circle,
   No.10, Palaniappa Malagai,
   Greams Road, Chennai - 600 006.

2. The Secretary to Government,
   Commercial Taxes & Registration Department,
   Fort St George, Chennai - 600 009.

+1 CC to Mr.V. Sundareswaran, Advocate sr 2162.
+1 CC to Spl. Govt. Pleader, sr 3098.

W.P.No.28953 of 2017

GP(CO)
SP(02/02/2018)

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