IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.977 of 2019
and
WMP.No.1092 of 2019

Srinidhi Synthetics Limited
Represented by its Director
Rajendra Kumar Kanodia
95, Krishna Talkies Road,
Erode - 638 003. ...Petitioner

vs.

The Assistant Commissioner (CT)
Assistant Commissioner (CT)
Nethaji Road Circle
Erode. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the files of the respondent herein in CST.No.709282/2013-2014 dated 29.05.2015 confirmed in CST No.70982/2013-2014 dated 16.07.2018 and quash the same and direct the respondent herein to pass fresh orders insofar as it relates to the claim of exemption on the inter-state sales of cloth to an extent of Rs.91,24,210/-.

For Petitioner: Mr.N.Inbarajan

For Respondent: Mr.V.Haribabu
Additional Government Pleader

O R D E R

Mr.V.Haribabu, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The present writ petition is filed challenging the order of assessment dated 29.05.2015 relevant to assessment year 2013-2014 and the consequential order dated 16.07.2018 rejecting the application filed under Section 84(1) of the Tamil Nadu Value

Added Tax Act, 2006.

3. Mr.N.Inbarajan, learned counsel for the petitioner contended that the very order of assessment was passed without affording an opportunity of personal hearing and therefore, when the petitioner has filed an application under Section 84 of the TNVAT Act, 2006, immediately on 26.11.2015, the Assessing Officer ought to have considered the merits of the contentions raised in the said application and should have passed a speaking order. Thus, he contended that the order passed on 16.07.2018 in rejecting the application filed under Section 84(1) of the TNVAT Act, 2006, cannot be sustained, as the same is totally a non-speaking order.

4. On the other hand, the learned Additional Government Pleader for the respondent contended that even though the petitioner has filed the application on 26.11.2015, claiming it to be under Section 84 of the TNVAT Act, 2006, in fact, the petitioner seeks for revision of assessment under Section 22(6)(a) of the TNVAT Act, 2006. Therefore, he contended that the Assessing Officer has dismissed the application filed against the assessment order on the reason that the grounds raised by the petitioner referred therein has already been discussed in the order of assessment itself.

5. Heard both sides.

6. There is no dispute to the fact that the order of assessment dated 29.05.2015 was sought to be revised by pointing out two defects, which according to the petitioner are liable to be considered and decided in the application filed under Section 84 of the TNVAT Act, 2006 dated 26.11.2015. No doubt, the learned Additional Government Pleader for the respondent sought to contend that it cannot be the application filed under Section 84 of the TNVAT Act, 2006, to rectify the mistake, since the petitioner themselves sought for revision of assessment under Section 22(6)(a) of the TNVAT Act, 2006, which ought to have been filed within 30 days from the date of the assessment.

7. I fail to understand as to how the learned Additional Government Pleader for the respondent is justified in improving the impugned order, when the above said reason is not available therein. What is stated in the order dated 16.07.2018 is that the grounds raised by the petitioner in the application filed under Section 84 of the TNVAT Act, 2006, are the grounds already discussed in the assessment order dated 29.05.2015. Thus, it is seen that the application filed by the petitioner has not been considered and decided by considering those grounds and by giving any finding on the same. In other words, the order dated 16.07.2018 seems to be a non-speaking order and therefore, this

Court is of the view that the respondent has to consider the application filed under Section 84 of the TNVAT Act, 2006 and pass a fresh order on merits and in accordance with law, especially when it is contended that at the time of original assessment, the petitioner was not given an opportunity of personal hearing.

8. Considering the above stated facts and circumstances, this writ petition is allowed in part and the order dated 16.07.2018 passed in the application filed under Section 84 of the TNVAT Act, 2006, by the petitioner alone is set aside. Consequently, the matter is remitted back to the respondent for passing fresh orders on merits and in accordance with law in the said application, after giving opportunity of personal hearing to the petitioner. Such exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (CT)
Assistant Commissioner (CT)
Nethaji Road Circle
Erode.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No. 3071
+2cc to the Special Government Pleader, S.R.No. 4288, 3517

RK(CO)
GN(06/02/2019)