IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.30740, 30741 & 30742 of 2015
MP.Nos.1, 1 & 1 of 2015

M/s.Care Stream Health India Pvt. Ltd.,
Represented by its General Manager/Authorized Signatory
Mr.Ron Thomas ...Petitioner in All WPs.

--Vs--

The Assistant Commissioner,
Commercial Tax Department,
Vadapalani I Assessment Circle,
Greems Road, Chennai-600006 ... Respondent in all WPs.

Prayer in WP.No.30740 of 2015: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus, calling for the records comprised in impugned order in CST No.867904/2012-13 dated 30.07.2015 on the file of the respondent and quash the same with a direction to the respondent to give an opportunity of personal hearing.

Prayer in WP.Nos.30741 & 30742 of 2015: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus, calling for the records comprised in impugned order in CST No.867904/2010-11 & 2011-12 dated 30.07.2015 on the file of the respondent and quash the same with a direction to the respondent to re-do the assessment and rectification proceeding in accordance with law after providing the petitioners notice and a reasonable opportunity of being heard.

For Petitioner : Mr.P.Purushotham
K.Magesh
For Respondents : Mr.V.Haribabu, AGP

ORDER

Impugned orders dated 30.07.2015 passed in terms of Section 84 of the Tamil Nadu Value Added Tax Act, 2006 ('Act') for revision of assessments passed in terms of the Central Sales Tax Act, 1956 ('CST Act') are under challenge in the present writ petitions.

2. The petitioner is assessed to Central Sales Tax. Orders of assessment for the periods 2010-11, 2011-12 and 2012-13 had been passed on 30.07.2015 that are, according to the learned counsel for the petitioner, pending in appeal before the first appellate authority. Pending appeal, the petitioner had sought rectification of the assessments on various grounds. I do not deem it necessary to refer to the grounds on which rectification has been sought, since this is not relevant for adjudicating upon the lis before me. The legal position agitated by the petitioner is something else.

3. The Assessing Authority rejected the Rectification petition filed on 23.01.2015 on the ground that no rectification under Section 84 would lie where an appeal was pending before the appellate authority. This relates to the petitions for Rectification filed for 2010-11 and 2011-12 only.

4. This order came to be challenged by way of writ petitions in W.P.No.5121 and 5122 of 2015 that came to be allowed on 26.02.2015 by a learned Single Judge of this Court setting aside the orders passed by the Assessing Authority and directing the Authority to consider the matter afresh. Thereafter, the petitioner appears to have filed three rectification petitions afresh on 09.03.2015. These petitions have come to be decided by orders dated 30.07.2015 impugned before me now.

5. As far as the periods 2010-11 and 2011-12 are concerned, admittedly and as fairly conceded by learned revenue counsel, in addition to the points upon which rectification has been sought by the petitioner, the Assessing Officer has raised the issue of high-seas sales which does not even emanate from the original order of assessment. The challenge to the impugned order is restricted only to this single issue, that is, the issue of high-seas sales. If at all the Assessing Authority was of the view that the Assessment originally formed in this regard had omitted to take into account the turnover on account of high-seas sales, it was incumbent upon him to have adopted the procedure as set out under Section 27 of the Act for reassessment/revision of assessment to bring to book escaped turnover. This cannot be done by way of a Rectification, and that too, in an application filed by the petitioner.

6. Thus, W.P.Nos.30741 & 30742 of 2015 are allowed.

7. As far as W.P.No.30740 of 2015 relating to assessment year 2012-13 is concerned, the petitioner argues that no opportunity has been granted to it prior to passing of the impugned order. The short point on which the impugned order dated 30.07.2015 is assailed is that the petitioner has filed detailed objections on 02.04.2015, which have not been taken into consideration. This is correct as there is not mention of the same even in the impugned order. The non-consideration of

the objections by the respondent constitute a violation of the principals of natural justice and thus, I set aside the impugned order. The petitioner will appear before the Assessing Officer on 1st of October, 2019 along with a copy of the objections filed earlier. No notice need be issued in this regard. After hearing the petitioner, an order of rectification under Section 84, de novo, shall be passed, within a period of two weeks from conclusion of personal hearing.

8. W.P.No.30740 of 2015 is disposed in the above terms. Consequently, Connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner,
Commercial Tax Department,
Vadapalani I Assessment Circle,
Greems Road, Chennai-600006

+3cc to Mr.P.Purushotham, Advocate SR.Nos.82426 to 82428

AKM/30.09.19/3P-5C /

W.P.No.30740, 30741 & 30742 of 2015
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