IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.9519 of 2019

M/s.Amco Batteries Ltd.,
rep.by its Company Secretary,
Addison Buildings, First Floor
803, Anna Salai,
Chennai 600 002. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Nungambakkam Assessment Circle,
Chennai 600 031. ... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in CST/34301/2013-14, quash the order dated 02.03.2018 passed therein and further direct the respondent to refund the excess tax of Rs.85,13,407/- together with interest at 1/2% per month from 02.10.2017.

For Petitioner : Mr.P.V.Sudakar
For M/s.B.Raveendran

For Respondent : Mrs.G.Dhana Madhri
Government Advocate

O R D E R

This writ petition is filed challenging the order of the respondent dated 02.03.2018 wherein and whereby the rectification petition filed by the petitioner was rejected mainly on the reason that the petitioner did not appear in person on the date of personal hearing nor filed any further objection and documents even after sufficient time was given. The petitioner also seeks for mandamus directing the respondent to refund the excess tax of Rs.85,13,407/- together with interest from 02.10.2017.

2. Heard both sides and perused the materials placed before this Court.

3. It is seen that in respect of assessment year 2013-2014 an order of assessment dated 03.07.2017 was passed by the Assessing Officer and the said order was put to challenge in W.P.No.19881 of 2017. It is further seen that the said writ petition was disposed of on 03.08.2017 by directing the petitioner to file a petition under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 enclosing all the relevant details in support of their stand and with further direction to the respondent to afford an opportunity of personal hearing and pass orders on merits and in accordance with law within a period of two weeks thereafter.

4. It is seen that accordingly the petitioner filed a petition under Section 84 of the said Act on 15.09.2017. It is further seen that though the petitioner was offered with personal hearing, they have not appeared on that day so fixed for personal hearing, consequently the impugned order was passed by the respondent. However now it is stated before this Court that during the relevant point of time though notice was received by the petitioner for personal hearing, as they were preoccupied with GST transition issues they could not appear for the personal hearing. The learned counsel for the petitioner further contended that if an opportunity is given to the petitioner they would certainly appear before the Assessing Officer and satisfy him with relevant documents.

5. The learned Government Advocate on the other hand contended that the petitioner has failed to utilise the opportunity of personal hearing and therefore the Assessing Officer cannot be faulted in passing the impugned order.

6. There is no dispute to the fact that the original order of assessment was put to challenge before this Court and however, as stated supra, this Court only granted liberty to the petitioner to file rectification petition under Section 84 of the said Act also with a direction to the Assessing Officer to pass orders on that application after providing opportunity of personal hearing. It is seen that though the petitioner was provided with an opportunity of personal hearing, has however not utilised the same by contending that at the relevant point of time they were preoccupied with GST transition issues. In any event, as the matter has not been decided by considering the merits of the issue while disposing the application under Section 84 of the said Act, this Court is of the view that one more opportunity can be given to the petitioner so as to enable the officer to decide the issue and pass fresh orders on merits and in accordance with law. In so far as the other limb of the prayer namely for refund of Rs.85,13,407/- is concerned, it is seen that already this Court has passed an order in W.P.No.5234

of 2018 dated 24.04.2018 directing the Assessing Officer to issue refund voucher for a sum of Rs.85,13,407/- as mentioned in the assessment order dated 03.07.2017 within a period of four weeks. If the said order is not complied with so far, it is for the petitioner to work out the remedy by filing a separate appropriate proceedings without seeking for one more mandamus to implement the order already passed by this Court. Therefore by granting liberty to the petitioner to work out the remedy as against the other limb of the prayer in a manner known to law, the impugned order dated 02.03.2018 is set aside and the matter is remitted back to the Assessing Officer for considering the application under Section 84 of the said Act on merits and in accordance with law after providing an opportunity of personal hearing to the petitioner by directing as follows:-

A. The petitioner shall appear before the respondent/Assessing Officer on 04.11.2019 with all relevant materials and records

B. On granting personal hearing on the said date, the Assessing Officer shall pass fresh order of assessment under Section 84 of the Act on merits and in accordance with law within a period of four weeks thereafter.

7. With the above direction the writ petition stands disposed of. No costs.

dpq

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST),
Nungambakkam Assessment Circle,
Chennai 600 031.

+1cc to Special Govt.Pleader,(Taxes),Vide Sr.No.86152

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Kak(12/11/2019)