IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.No.24547 of 2019
and
WMP No.24230 of 2019

M/s.Crest Auxiliaries
Represented by its Partner
Mr.M.B.Sathy Narayanan
... Petitioner

vs.

The State Tax Officer
Perundurai Circle
Perundurai.
... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the respondent in TIN No.951965/2012-13 dated 30.05.2019, quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice.

For Petitioner : Mr.S.Raveekumar

For Respondent : Ms.G.Dhanamadhri,
Government Advocate.

O R D E R

Mr.S.Raveekumar, learned counsel on record for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate, who accepts notice on behalf of the sole respondent are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up and is being disposed of.

3. An order 'dated 30.05.2019, bearing Reference No.TIN 951965/2012-13' (hereinafter 'impugned order' for brevity) passed by the sole respondent has been called in question.

4. Learned counsel for writ petitioner, adverting to the impugned order submitted that respondent has passed a common order with regard to assessments under 'Central Sales Tax Act, 1956' ('CST Act' for brevity) and 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' ('TNVAT Act' for brevity).

5. Assessment Year which we are concerned is 2012-13. With regard to CST assessment, a perusal of the impugned order reveals that the authority has verified the revised forms and returns filed by the writ petitioner dealer, has found them to be in order and has accepted the same.

6. However, the other point that has been assailed by the learned counsel for writ petitioner merits consideration.

7. Learned counsel for writ petitioner points out that with regard to TNVAT assessment, it is a case of 'Input Tax Credit' ('ITC' for brevity) reversal and therefore, it is necessary that writ petitioner dealer should have been put on notice and should have been given a reasonable opportunity to show cause. In other words, it is the specific case of the writ petitioner that no revisional notice was issued with regard to TNVAT assessment.

8. Learned Revenue Counsel, who has accepted notice on behalf of the sole respondent, submitted that it may not be gainsaid that CST assessment is incorrect, because the authority has accepted the revised forms and returns filed by the writ petitioner and has arrived at a total tax liability on Rs.6,87,208/-.

9. Though on the face of it learned Revenue Counsel appears to be correct, the problem for Revenue presents itself in a different form and that is respondent having passed a common order pertaining to CST and TNVAT assessments, where the TNVAT assessment having been made without issuing any revisional notice.

10. Ideally, it would be desirable to avoid such an exercise and it would be desirable to pass separate orders with regard to the two statutes. Be that as it may, in the light of the exercise that has been done severing CST assessment and TNVAT assessment in the impugned order may lead to further complexities. Therefore, this Court is of the considered view that there is a clear violation of the statutory requirement in TNVAT Act to issue revisional notice and give an opportunity to the writ petitioner dealer to show cause against revision, the impugned order can be set aside and the respondent can be directed to redo the revised assessment afresh.

11. In the light of the narrative thus far, the following order is passed:

a) impugned order being order dated 30.05.2019, bearing Reference No.TIN 951965/2012-13 is set aside. It is made clear that impugned order is set aside only on the ground that writ petitioner dealer has not been put on notice and no revisional notice has been issued before revised assessment order. In other words, it is made clear that impugned order is set aside without expressing any opinion on the merits of the matter.

b) Respondent is directed to redo the assessment by passing separate orders under CST Act and TNVAT Act after following the procedure prescribed in the respective statutes.

c) The aforesaid exercise of redoing the orders shall be completed as expeditiously as possible and in any event within 12 weeks from the date of receipt of a copy of this order.

d) Redone revised assessment orders shall be served on the writ petitioner dealer under due acknowledgement.

Writ Petition is disposed of with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsm
To

The State Tax Officer
Poonamallee Circle
Poonamallee,Chennai.

+1cc to Mr.S.Raveekumar , Advocate SR.No.72082
+1 cc to Spl Government Pleader Sr.No. 72894

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A.SK(18/09/2019)
A.SK(15/10/2019)