IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.24350 of 2019
and
WMP No.24098 of 2019

Tvl.Shree Guru Hasti Thanga Maaligai
Rep. by its Proprietor
No.3, Car Street, Poonamallee
Chennai - 600 056. ... Petitioner

vs.

The State Tax Officer
Poonamallee Assessment Circle
Varadharajapuram
Chennai - 602 123. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 06.02.2019 passed by the respondent in TIN No.33031662752/2016-17 and quash the same as illegal, arbitrary and devoid of merits, consequently direct the respondent to redo the assessment according to law by giving an opportunity to file his explanation and an opportunity of personal hearing and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.

For Petitioner : Mr.K.Sivaraman

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

O R D E R

Mr.K.Sivaraman, 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. Short facts shorn of elaboration are that writ petitioner is a dealer under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' (hereinafter 'TNVAT Act' for brevity), that a revised assessment order came to be passed against the writ petitioner, writ petitioner assailed the same by way of a writ petition in this Court being W.P.No.10086 of 2018 and that the said writ petition came to be disposed of by a Hon'ble Single Judge of this Court by order dated 23.04.2018 inter alia directing the respondent to treat the impugned revised assessment order as a show cause notice, call for objections within two weeks and redo the assessment.

4. However, it is very fairly submitted by learned counsel for writ petitioner, at the hearing today, that writ petitioner did not follow up the matter with the respondent and writ petitioner did not submit objections within a fortnight from the date of receipt of a copy of the order in the earlier writ petition, that the respondent notwithstanding this position sent a notice dated 19.06.2018 to the dealer reminding writ petitioner dealer that respondent did not receive any objections within 15 days as per the order of this Court, but still the writ petitioner did not file any objections. Therefore, left with no option, respondent after recording this position, has passed the revised assessment order under Section 27 of TNVAT Act, being 'order dated 06.02.2019 bearing Reference No.TIN/33031662752/2016-17' (hereinafter 'impugned order' for brevity).

5. Instant writ petition has been filed assailing the impugned order.

6. Learned counsel for writ petitioner, at the hearing, very fairly submitted that writ petitioner could not follow up the matter with the respondent as the concerned staff, who was handling the matter left the writ petitioner's employment. Learned counsel for writ petitioner also fairly submitted that though the reminder notice dated 19.06.2018 was received, the writ petitioner could not respond as the concerned staff, who was handling the matter left writ petitioner's employment.

7. Saying so, learned counsel for writ petitioner submits that it would be desirable to give one more opportunity to the writ petitioner. In other words, notwithstanding very many averments in the affidavit filed in support of the instant writ petition, learned counsel for writ petitioner focused his submission on this aspect to the matter.

8. Learned Revenue Counsel pointed out that writ petitioner has been lethargic and recalcitrant. Saying so,

learned Revenue Counsel submitted that writ petitioner cannot now seek for one more opportunity as that would become an exercise in eternity and many dealers may start taking umbrage by adopting such a course citing one reason or the other. This Court has no difficulty in accepting this submission.

9. However, there is one window available to the writ petitioner in the instant case. A perusal of the impugned order reveals that writ petitioner has paid the entire tax liability. Relevant paragraph in the impugned order reads as follows:

> 'In the above circumstances the orders already passed on 30.11.2017 are hereby ordered to be restored and the dealers are finally assessed for the year 2016-17 under the TNVAT Act 2006 on a total and taxable turnover of Rs.3,39,61,246/- taxable at 1%.
>
> Tax Due : Rs.339612-00
>
> Tax Paid : Rs.339612-00
>
> \-------------
>
> Excess (+) Rs. --Nil--
>
> \-------------'

10. Therefore, if the writ petitioner were to avail the alternate remedy of an appeal to the jurisdictional Appellate Deputy Commissioner under Section 51 of TNVAT Act, it would be appropriate to direct the 'jurisdictional Appellate Deputy Commissioner' (hereinafter 'Appellate Authority' for brevity) to entertain the appeal without insisting on 25% pre-deposit. This view has been taken owing to the peculiar facts and circumstances of the case and owing to the undisputed position that writ petitioner has paid the entire tax liability.

11. However, learned counsel for writ petitioner is unable to give the exact date on which impugned order was served on the writ petitioner. Therefore, appeal if any before the Appellate Authority will be subject to limitation, which is adumbrated in Section 51 of TNVAT Act.

12. This Court also notices that instant writ petition has been presented in this Court on 16.08.2019. The period spent in the instant writ petition i.e., period from 16.08.2019 to the date on which the copy of order is made available will stand excluded while computing limitation before the Appellate Authority. This limb of the order has been made by drawing inspiration from the principles enshrined in Section 14 of Limitation Act.

13. It is also noticed that the Appellate Authority i.e., jurisdictional Appellate Deputy Commissioner has not been

arrayed as one of the respondents. Learned Revenue Counsel shall intimate the contents of this order under cover of a suitable letter to the Appellate Authority.

14. If the writ petitioner chooses to file a statutory appeal, subject to limitation in the aforesaid manner, the same shall be dealt with and heard out on its own merits and in accordance with law.

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

vsm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer
Poonamallee Assessment Circle
Varadharajapuram
Chennai - 602 123.

+2cc to Mr.K.Sivaraman, Advocate, SR.No.71889
+1cc to the Spl. Govt.Pleader, (Taxes) Vide Sr.No.72893

W.P.No.24350 of 2019
and WMP No.24098 of 2019

Kak(18/09/2019)