IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.27931 & 27932 of 2019

L & T Thales Technology Services Private Limited
Represented by its Manager - Indirect Taxes
RR V Tower, 7th Floor, 33A Developed Plots
SIDCO Industrial Estate, Guindy,
Chennai-600 032. ...Petitioner in both W.P.s

vs.

1. The Commissioner of GST & Central Excise
Chennai South Commissionerate
MHU Complex, Nandanam,
Chennai-600 035.

2. The Assistant Commissioner of GST & Central Excise
Guindy Division, Chennai South Commissionerate
690, E.V.R. Periyar Maligai, 3rd Floor,
Nandanam, Chennai-600 035. ...Respondents 1 & 2 in both W.P.s

3. The Union of India
Through its Revenue Secretary
Department of Revenue, Ministry of Finance
128-A/North Block, New Delhi. ... 3rd respondent in W.P.No.27932 of 2019

Writ Petition No.27931 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned order in Original No.39/2019 dated 31.03.2019 passed by the 2nd respondent and quash the same.

Writ Petition No.27932 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned order in Original No.13/2019 dated 20.02.2019 passed by the 2nd respondent and quash the same.

For Petitioner in both W.P.s :Mr.Raghavan Ramabadran
For Respondents in both W.P.s:Mrs.Hema Muralikrishnan
Senior Standing Counsel

COMMON ORDER

Both these writ petitions are filed challenging the orders in original Nos.39/2019 and 13/2019 dated 31.03.2019 and 20.02.2019 respectively, passed by the second respondent.

2. In W.P.No.27931 of 2019, the order impugned has partly rejected the refund claim made by the petitioner, whereas in W.P.No.27932 of 2019, the order impugned rejected the whole claim of refund made by the very same petitioner. It is seen that the refund claim was made by the petitioner in respect of two different periods and thus, the above two different orders in original were passed.

3. Mrs.Hema Muralikrishnan, learned Senior standing counsel takes notice for the respondents. Since the issue involved in these cases lies in narrow compass, these writ petitions are taken up for final disposal at the admission stage itself, with the consent of the learned counsel appearing on either side.

4. Though as against the impugned orders passed by the Adjudicating Authority, a statutory appellate remedy is available before the concerned Appellate Authority, Mr.Raghavan Ramabadran, learned counsel for the petitioner submitted that these writ petitions are maintainable before this Court, since the impugned orders were passed in violation of principles of natural justice. It is contended by the learned counsel for the petitioner that the second respondent, before passing the impugned orders, did not issue any show cause notice or provide an opportunity of personal hearing to the petitioner. Therefore, he contended that these impugned orders cannot be sustained solely on the ground of violation of principles of natural justice. In support of his contention, the learned counsel relied on two decisions of this Court in the case of Vasta Bio-Tech Pvt. Ltd., Vs. Assistant Commissioner of Customs, Chennai, 2018 (360) E.L.T. 234 and in the case of Sri Gayathri Cashews Vs. Assistant Commissioner of GST and C.Ex., Cuddalore, 2018 (19) G.S.T.L. 408.

5. Mrs.Hema Muralikrishnan, learned Senior Standing counsel for the respondents contended that the applications filed by the petitioner for refund was considered and after seeking certain clarifications from the petitioner through communication dated 06.08.2018 and on perusing such clarification, the second respondent has passed the impugned orders. Therefore, she submitted that the authority has considered the merits of the claim made by the petitioner and rightly passed the impugned orders. However, on the question of providing an opportunity of

personal hearing, as raised by the petitioner herein, the learned Senior Standing counsel fairly submitted that no such opportunity was granted in this case. Therefore, she fairly submitted that the impugned orders itself may be treated as show cause notices and the petitioner may be permitted to give reply to the same, so as to enable the second respondent to pass fresh orders on merits and in accordance with law.

6. Heard both sides.

7. It is seen that the petitioner made the refund claim in respect of two different periods and the said claim has resulted in passing the impugned orders. While in one case, the second respondent has chosen to partly accept and partly reject the claim, in the other case, he totally rejected the claim. It is an admitted fact that in both the cases, the second respondent, before passing the impugned orders, not heard the petitioner. As rightly pointed out by the learned counsel for the petitioner, if the authority chooses to reject the refund claim either in part or whole, he should put the petitioner on notice and seek for explanation and decide the matter thereafter on providing an opportunity of personal hearing as well. The above view is supported by the decision rendered by the learned Single Judge of this Court reported in 2018 (360) E.L.T. 234. I myself considered the scope of affording an opportunity of personal hearing in similar refund claim matter in the case reported in 2018 (19) G.S.T.L. 408 and directed the respondent therein to afford an opportunity of personal hearing to the petitioner therein.

8. Considering the above stated facts and circumstances, both these Writ Petitions are disposed of as follows:

(a) The parties are directed to treat the impugned orders as show cause notices issued on the petitioner.

(b) The petitioner shall file their objections/reply within a period of four weeks from the date of receipt of a copy of this order.

(c) On receipt of such objections/reply, the second respondent shall pass fresh orders on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner.

No costs.

Sd/-
Asst.Registrar (CJ Conf)

/true copy/

Sub Asst. Registrar

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To
1.The Commissioner of GST & Central Excise
Chennai South Commissionerate
MHU Complex, Nandanam,
Chennai-600 035.
2.The Assistant Commissioner of GST & Central Excise
Guindy Division, Chennai South Commissionerate
690, E.V.R. Periyar Maligai, 3rd Floor,
Nandanam, Chennai-600 035.
3.The Revenue Secretary
The Union of India
Department of Revenue, Ministry of Finance
128-A/North Block, New Delhi.

+2 cc to M/s.Lakshmikumaran & Sridharan Advocate sr81427
+1 cc to Mrs.Hema Muralikrishnan Advocate sr81305

W.P.Nos.27931 & 27932 of 2019

pm(co)
aa11/10/2019