IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.28356 of 2019
and
W.M.P.No.28038 of 2019

M/s.Teambest Theratronics Asia Private Limited
Rep. by its Financial Advisor
Mr.J.Joshua ...Petitioner

vs.

The State Tax Officer
Medavakkam Assessment Circle
Plot No.26-D, Bhel Nagar, 4th Main Road,
8th Cross Road, Medavakkam,
Chennai-600 100. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in TIN/33576341056/2016-2017 and quash the order dated 30.07.2019 passed therein.

For Petitioner : Mrs.Hema Muralikrishnan
For Respondent : Mr.M.Hariharan
Additional Government Pleader (Tax)

ORDER

Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondent. By consent of both the parties, the writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 30.07.2019.

3. The case of the petitioner is as follows:

One company situated in Canada viz., Best Theratronics Ltd., is engaged in the manufacture of Cancer equipments and those equipments are being sold by the said Canadian company to various Government hospitals in this Country. The petitioner is an Indian company and sister concern of the said Canadian company. The petitioner-Company was formed in order to provide prompt service of maintenance to highly sophisticated Cancer equipments so that patients are not affected. The petitioner-Company has entered into maintenance agreement with several Government Hospital for the purpose of maintenance and service of the Cancer equipments that have been supplied by the above said Canadian Company. The petitioner is registered under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In respect of the assessment years 2016-2017, a notice of proposal was issued on 25.04.2019, proposing to revise the assessment. The petitioner submitted their reply on 29.05.2019, 10.06.2019, 19.06.2019 and 02.07.2019. They also filed Form-WW, Chartered Accountants new certification in support of their claim. The petitioner came to know and realized that the figures in respect of sale of products liable to VAT and sale of services liable to service tax had been interchanged in the balance sheet. Hence, the petitioner wanted to rectify the same. However, the Assessing Officer did not accept the genuine mistake committed in interchanging the figures in respect of sale of products and sale of service. He also not accepted the Chartered Accountants new certification. Therefore, if one more opportunity is given to the petitioner, they would prove their case before the Assessing Officer with relevant materials.

4. The learned counsel for the petitioner reiterated the above contention and submitted that one more opportunity may be provided to the petitioner, by considering the nature of service they are doing viz., maintenance of Cancer equipments at the Government Hospitals.

5. The learned Additional Government Pleader for the respondent, on the other hand, submitted that several opportunities were given to the petitioner to place the materials in support of their contention, however, the same was not utilized. Therefore, he contented that the petitioner cannot seek for one more opportunity as a matter of right.

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

7. The Assessing Officer, after issuing the notice of proposal, passed the impugned order revising the assessment. The Assessing Officer pointed out that the Assessee/petitioner did not furnish material documents though several opportunities were given. It is the case of the petitioner that there is a mistake committed in the balance sheet, where the figures in

respect of sale of products liable to VAT and sale of service liable to service tax had been interchanged inadvertently and therefore, the same has to be rectified. According to the petitioner, the said mistake was noticed by them only after getting the notice of proposal dated 25.04.2019.

8. It is seen that the Assessing Officer has passed the impugned order after providing sufficient opportunity to the petitioner. Going by the order impugned in this writ petition, it is seen that the petitioner was given several opportunities. However, considering the fact that the claim of the petitioner is that there is a genuine mistake committed in interchanging the figures relating to sale of products as well as sale of service and when such mistake is sought to be rectified and further considering the fact that the petitioner-Company is engaged in rendering maintenance service to highly sophisticated Cancer equipments at the Government Hospitals, this Court is of the view that an indulgence can be shown to the petitioner as a final chance before the Assessing Officer to place all the material documents in support of their contention so as to enable the Assessing Officer to redo the assessment and pass fresh orders. However, such indulgence can be shown only by putting the petitioner on some terms.

9. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer for redoing the assessment on the following terms and conditions:

(a) The petitioner shall pay 15% of the tax liability to the Assessing Officer within a period of three weeks from the date of receipt of a copy of this order.

(b) The petitioner shall also file necessary documents in support of their claim along with such payment.

(c) On receipt of such payment and furnishing of documents, the Assessing Officer shall fix the date of personal hearing and inform the same to the petitioner.

(d) On completion of such personal hearing, the Assessing Officer shall pass fresh order of assessment on merits and in accordance with law, within a period of four weeks thereafter.

It is made clear that this Court is not expressing any view on the merits of the claim made by the petitioner, as it is for the

Assessing Officer to consider and decide the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer
Medavakkam Assessment Circle
Plot No.26-D, Bhel Nagar, 4th Main Road,
8th Cross Road, Medavakkam,
Chennai-600 100.

+1 cc to M/s.Hema Muralikrishnan,Advocate Sr.No. 82559
+1 cc to The Special Government Pleader (Taxes), SR.No.82688

AKM/30.10.19/4P-4C /

W.P.No.28356 of 2019