IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24-06-2019

CORAM
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.34542 of 2018
And
W.M.P.No.40076 of 2018

Mahavir Multi Media
Electronic Complex 1st Floor,
No.19, Narasingapuram Street,
Anna Salai,
Chennai-600 002 Represented by
Prakash Chand Chordia, Proprietor. ...Petitioner

..Vs..

The Assistant Commissioner (CT),
Chintadripet Assessment Circle,
Chennai-600 006. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order of the respondent herein in Order No.TIN 33280581113/2014-15 dated 30.10.2018 and quash the same.

For Petitioner : Mr.R.Narayanan

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

O R D E R

Mr.R.Narayanan, learned counsel on record, for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate, on behalf of lone official respondent, are before this Court.

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

3. Subject matter of instant writ petition pertains to 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act No.32 of 2006)', hereinafter referred to as 'TNVAT Act' for the sake of brevity.

4. Writ petitioner is a Registered Dealer under TNVAT Act and writ petitioner is carrying on business as dealers in computer peripherals, accessories and Closed Circuit Televisions (CCTVs).

5. Subject matter of instant writ petition pertains to financial year 2014-2015.

6. It is submitted by learned counsel for writ petitioner that monthly Returns were being filed inter-alia under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act.

7. When things stood as above, officials from the Enforcement Wing of the respondent-Department, visited the business premises of writ petitioner on 6.8.2015, inspected the records, took inventory of goods in trade and conducted an audit of the accounts maintained by writ petitioner.

8. Certain discrepancies were noticed.

9. Pursuant thereto, a notice was issued to writ petitioner by the Department, calling upon the writ petitioner to file objections and explain the discrepancies. This notice is dated 30.11.2015. Writ petitioner sent a reply to this notice and this reply is dated 31.12.2015.

10. Thereafter, the matter was lying dormant. In other words, there was a lull and nothing happened pursuant to the notice dated 30.11.2015 and writ petitioner's reply dated 31.12.2015.

11. When the matter was lying dormant, as above, another notice was issued by the Department. This notice is dated 27.2.2017. This notice also pertains to the discrepancy noticed by the Enforcement Wing in the inspection on 6.8.2015 and it pertains to the same assessment year, namely, 2014-2015.

12. To this second notice, writ petitioner sent a reply dated 7.3.2017. The contents of this reply is crucial and this Court shall allude to the same infra elsewhere in this order.

13. Pursuant to this second notice dated 27.2.2017 and the writ petitioner's reply/objection to the same date 7.3.2017, the respondent passed a revised assessment order under Section 27 of TNVAT Act, on 4.8.2017 and this revised assessment order bears Reference No.TIN:33280581113/2014-2015. Writ petitioner was under the bona fide belief that this revised assessment order is end of the matter, but that was not to be.

14. In the aforesaid backdrop, Respondent-Department suddenly took stock of the first notice dated 30.11.2015 and writ petitioner's reply dated 31.12.2015 with regard to the same financial year, namely, 2014-2015 and straightaway passed another revised assessment order dated 30.10.2018, which also bears same reference, namely, Reference No.TIN:33280581113/2014-2015. This second revised assessment order dated 30.10.2018 has been called in question in the instant writ petition and the same shall be referred to as 'impugned order'.

15. The respondent has filed a counter-affidavit and the pivotal contention of the respondent in counter-affidavit is that there is no restriction on the respondent with regard to the number of revised assessments that can be passed under Section 27 of TNVAT Act. Learned counsel for writ petitioner very fairly submits that he is not disputing this proposition. Therefore, this Court is not going into this aspect of the matter any further in this case.

16. What the learned counsel for writ petitioner would emphasise is that the respondent has already concluded the issues pertaining to the discrepancies vide first revised assessment order dated 4.8.2017 and thereafter, at least one of the same issues has been revisited in the second assessment order, i.e., the impugned order. This one issue, according to learned counsel for writ petitioner, is reversal of 'Input Tax Credit ('ITC' for brevity) and reversal of ITC under Section 19 (5)(c) of TNVAT Act.

17. A perusal of first revised assessment dated 4.8.2017 and the impugned assessment order (second revised assessment) dated 30.10.2018 reveal that while the first revised assessment has been passed on the basis of notice and reply in February and March of 2017 alone without taking into account the earlier notice and reply in November and December of 2015, the second assessment order, i.e., impugned order has been passed taking into account the notice and reply in November 2015 and December 2015 respectively alone giving a complete go by to the notice and reply in 2017 February and March.

18. It was also brought to the notice of this Court by learned counsel for writ petitioner that the first and the second revised assessment orders have been passed by different Officers.

19. Though, writ petitioner, fairly conceded that more than one revision is permissible, under normal circumstances, revision of the same issue which has already been decided would become a vexed exercise. However, problem presents itself differently for writ petitioner in the instant case.

20. Writ petitioner, while sending the aforementioned reply dated 7.3.2017, has not mentioned anywhere that a notice was issued on 30.11.2015 and the writ petitioner has sent a reply dated 31.12.2015. The writ petitioner also has dealt with the matter afresh.

21. Notwithstanding this lapse on the part of writ petitioner, this Court is of the considered view that this is a fit case for remitting the matter back to the respondent, as the impugned order does not mention anything about notice and reply in 2017 or the earlier revised assessment order dated 4.8.2017. This Court is of the considered view that this issue can be sorted out if personal hearing is granted to the writ petitioner.

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

(a) Impugned revised assessment order, being order dated 30.10.2018 bearing Reference No.TIN 33280581113/2014-15 is set aside. Impugned order is set aside solely for the purpose of facilitating a personal hearing for the writ petitioner. In other words, this order is not set aside on merits and it is made clear that this Court does not express any opinion or view on merits of the matter.

(b) By consent of both sides, personal hearing is fixed on 12.7.2019 (Friday) at 12.00 Noon in the office of the respondent.

(c) Writ petitioner undertakes to go before the respondent on the aforesaid date, time and venue, produce all documents and also bring it to the notice of the officials concerned, all issues that have been canvassed and adverted to supra. To be noted, as already mentioned supra, this Court does not express any opinion on merits.

(d) If the writ petitioner does not avail the opportunity of personal hearing on the aforesaid date, time and venue, the impugned order will stand revived. If the writ petitioner avails the personal hearing and produces documents and also brings to the notice of the respondent, the issues involved, the respondent shall take into account all the objections and documents filed in support thereto and pass a fresh revised assessment order, as expeditiously as possible but in any event, within eight weeks from the date of personal hearing i.e., on or before 6.9.2019.

(e) The redone revised assessment order, done in the aforesaid manner, shall be communicated to the writ petitioner under Due Acknowledgment, within seven working days from the date of the order.

23. This writ petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//
Sub Assistant Registrar

Svn

To

The Assistant Commissioner (CT),
Chintadripet Assessment Circle,
Chennai-600 006.

+1cc to Mr.R.Narayanan, Advocate, S.R.No.52262
+1cc to the Government Pleader, S.R.No.52486

WP 34542 of 2018

RGN(CO)

RRS(19/07/2019)