IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.12.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 22689 of 2015
and
M.P. Nos. 1 to 3 of 2015

Tata Sky Limited
Represented by its General Manager
Mr. V.Kalyan Kumar
First Floor, SYMTEC, F-5
Third Phase, Ekkaduthangal
Chennai - 600 032. ... Petitioner

-vs-

1. The State of Tamil Nadu
Represented by the Secretary
Commercial Taxes and Regulations Department
St. George Fort
Chennai.

2. The Commercial Tax Officer
Guindy Assessment Circle
46, Greenways Road
Taluk Office Building
R.A.Puram, Chennai - 600 028. ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Re-assessment order dated 30.06.2015 bearing reference No.TIN 33100561230/2013-14 along with Form O and Form RR issued thereon by the Second Respondent and to quash aside the same as arbitrary, unconstitutional and against law and consequently direct the Second Respondent to hold de-novo adjudication of the matter by reconsidering the submissions made by the Petitioner's reply dated 30.06.2015.

For Petitioner : Mr. A.K.Raja Raman

For Respondent : Mr. Mohammed Shaffiq
Special Government Pleader

O R D E R
(through video conference)

Heard Mr.A.K.Raja Raman, Learned Counsel for the Petitioner and Mr. Mohammed Shaffiq, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the re-assessment order dated 30.06.2015 for the year 2013-2014 in respect of the Petitioner under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'the TNVAT Act' for short).

3. It is contended by the Learned Counsel for the Petitioner that in respect of the same Petitioner for the previous years 2009-2010 to 2012-2013, this Court by order dated 24.01.2020 in W.P. Nos. 834 of 2015 etc., batch had considered the matter and remitted the matter for re-consideration for the reasons explained in the said order, which reads as follows:-

> "11. I have considered the arguments advanced on behalf of the petitioner and the respondents and perused the impugned order. It is noted that the petitioner was not only providing DTH service to its subscribers on which it was paying service tax, it was also collecting activation and installation charges at the time installation and activation of the DTH services. During the assessment year 2013-14, the petitioner claims to have stopped selling DTH Set-Top Box and started offering it as part of DTH service. However, in the impugned order for the said assessment are also the clauses in the agreements for the previous period have been relied upon.
>
> 12. It is further noticed that there may have been transfer of right to use of the dish net antenna, cable and accessories and later set top box as well. It is not clear from the impugned order and the notices issued by this order to the petitioner whether any proposal was made to collect VAT from the petitioner under section 4 of the TN VAT Act, 2006 as the petitioner had prima facie, transferred the right to use in favour of the subscribers. There is also no clarity on the issue relating to denial of credit. There is also no clear discussion in the impugned orders as to whether the petitioner has paid service tax on the activation installation charges on the

whole or part of the amount. Thus, the impugned order is liable to be set aside and remitted back for passing a fresh order.

13. Under these circumstances, I am inclined to set aside the impugned orders and remit the case back to the respondent to pass fresh order on merits within a period of 3 months from date of receipt of a copy of this order. Respective impugned orders which stand quashed shall be treated as show cause notices. If desired, the respondent may issue a further corrigendum to the petitioner to answer within a period of 60 days from date of receipt of a copy of this order. It is expected that the respondent shall pass a speaking order in accordance with law within a period of 120 days from date of receipt of a copy of this order. Needless to state, before passing such orders for the respective assessment years, petitioner shall also be heard in person or through their legal/sales tax representatives."

It is contended that the same infirmity as noticed in the aforesaid order is apparent on the face of record in the present case and as such, the benefit of that decision may be extended to the Petitioner for the year 2013-2014 also.

4. Having regard to the aforesaid submissions made by the Learned Counsel for the Petitioner, which deserves acceptance, there is no justification to deny the Petitioner of the same benefit for the assessment year 2013-2014, which has been granted for the assessment years 2009-2010 to 2012-2013 in the order dated 24.01.2020 in W.P. Nos. 834 of 2015 etc., batch passed by this Court.

5. In that view of the matter, the impugned Order No. TIN 33100561230/2013-14 dated 30.06.2015 passed by the Second Respondent is set aside and the matter is remitted to the Second Respondent for fresh consideration. It shall be incumbent upon the Second Respondent to take into consideration the conclusions and observations made by this Court in the order dated 24.01.2020 in W.P. Nos. 834 of 2015 etc., batch, conduct enquiry affording full opportunity of personal hearing to the Petitioner following the prescribed procedure in consonance with the principles of natural justice, deal with each of the contentions raised, and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment.

The Writ Petition is ordered on the aforesaid terms. Consequently, connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

maya/vjt

To

1. The Secretary
   The State of Tamil Nadu
   Commercial Taxes and Regulations Department
   St. George Fort
   Chennai.

2. The Commercial Tax Officer
   Guindy Assessment Circle
   46, Greenways Road
   Taluk Office Building
   R.A.Puram, Chennai - 600 028.

+1 cc to Special Government pleader Taxes sr38776
+1 cc to Mr.R.Sathish kumar Advocate sr38384

W.P. No. 22689 of 2015

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