IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

W.M.P.No.13983 of 2020
in
W.P.No.24329 of 2019

Tvl.Rabbani Electricals
Represented by its Partner
No. 22, Tindivanam Road
Gingee ...Petitioner

Vs.

The State Tax Officer
Gingee ...Respondent

Writ Miscellaneous Petition filed under 226 of the Constitution of India to clarity the order dated 22.08.2019 passed by this Court in W.P.No.24329 of 2019.

WP.No.24329/2019 Prayer:
To call for records of the respondent in order of Assesment in TIN 33664740749/2016-17 dated 14/02/2018 and quash the same and consequently direct the Respondents to pass fresh orders after adopting the findings laid down by this Court under identical circumstances.

For Petitioner : Mr.J.Prasanna Kumar
For Respondent : Ms.G.Dhanamadhri
Government Advocate

ORDER

Mr.J.Prasanna Kumar, learned counsel on record for petitioner in captioned 'Writ Miscellaneous Petition' ('WMP' for the sake of brevity) and Ms.G.Dhanamadhri, learned Revenue Counsel for sole respondent are before me in this web-hearing on a video-conferencing platform.

2.'W.P.No.24329 of 2019' (hereinafter 'main WP' for the sake of convenience and clarity) was taken up with the consent of both sides and disposed of by me vide an order dated 22.08.2019.

3.Main WP pertains to challenge to a revised Assessment Order dated 14.02.2018 made by the respondent under Section 27(1)(a) of 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for the sake of brevity and clarity. To be noted, there is a mandamus limb also to the prayer, which pertains to direction to the respondent to pass orders afresh.

4. After hearing both sides inter alia on the ground that opportunity has been given to the writ petitioner/assessee before the impugned order of revision and on the ground of effective efficacious alternate remedy by way of a statutory appeal under Section 51 of TNVAT Act is available, main WP came to be disposed of by me vide 22.08.2019 order.

5. Learned counsel on both sides i.e., learned counsel for petitioner in captioned WMP and learned Revenue counsel for respondent submit without any disputation or disagreement that this order made by me in the main WP has attained finality and has given legal quietus by both sides. In other words, the matter has not been carried in appeal.

6. Post disposal of main WP, this Court is informed that writ petitioner preferred an appeal before jurisdictional Appellate Authority concerned by way of an appeal petition dated 30.01.2020 and this Court is informed that this appeal is under Section 51 of TNVAT Act.

7. The jurisdictional Appellate Authority has passed an 'order dated 11.02.2020 bearing reference Rc.A1/76/2020' (hereinafter 'said order' for the sake of brevity and clarity) returning the appeal petition along with annexures primarily on the ground that it is barred by limitation, there is a cap for condonation of delay (wrongly mentioned as 'gap' in said order is learned Revenue counsel's say). Learned counsel for petitioner submits that the statutory appeal petition is within the tolerance band for delay or in other words within the condonable cap, the Appellate Authority should have either condoned the delay or returned the papers and given an opportunity to the writ petitioner / assessee. This Court refrains itself from expressing any opinion on this submission as this is a clarification petition.

8. If the petitioner/assessee is aggrieved by the said order made by the jurisdictional Appellate Authority, it is for the writ petitioner/assessee to pursue the matter by

assailing the said order in a manner known to law, but that cannot be done by way of a clarification petition in a disposed of writ petition. As would be evident from the articulation in Paragraph 10 of the affidavit filed in support of captioned WMP, vide 22.08.2019 order, this Court has left all questions on merits open.

9. Therefore, this Court finds no ground to entertain this captioned clarification WMP and the same cannot but be negatived.

10. Before parting with this case, this Court notices that main WMP has been filed by another counsel i.e., counsel other than the learned counsel, who is now before me in captioned clarification WMP. Though this Court could have refused to entertain the captioned WMP on this sole ground, considering the peculiar facts and circumstance of this case and the nature of submissions made by learned counsel for petitioner in captioned WMP, this Court has examined the clarification plea and therefore this order will not serve as a precedent on this aspect of the matter.

11. At this juncture, learned counsel for petitioner in captioned WMP seeks leave of this Court to preserve the rights of the petitioner/writ petitioner - Assessee to assail the said order i.e., order of jurisdictional Appellate Authority in a manner known to law. This request is acceded to. If the petitioner/writ petitioner - Assessee is so advised and if the writ petitioner chooses to assail the said order in a manner known to law, it is made clear that dismissal of captioned clarification WMP will not impede the same or in other words it will not come in the way.

Captioned WMP dismissed albeit preserving the rights of the petitioner to the limited extent set out supra. There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The State Tax Officer,
Gingee.

+1cc to M/s.J.Prasanna Kumar, Advocate, S.R.No.31368
+1cc to Special Government Pleader(taxes).S.R.No.31542

W.M.P.No.13983 of 2020 in
W.P.No.24329 of 2019

GPA(CO)
KKV/09/10/2020