IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.9948 & 9949 of 2019
&
W.M.P. Nos. 10519 & 10520 of 2019

(Through Video Conferencing)

Tvl.Anugraha traders,
Represented by its Proprietor Mr. P.G.Balan,
No.14, M.R.S.Complex, Hospital Road,
Tindivanam - 604 001. ... Petitioner in both W.Ps

Vs

The State Tax Officer [Additional],
Tindivanam Assessment Circle,
Nehru Road, Tindivanam - 604 001. ... Respondent in both W.Ps

Prayer in W.P.No.9948 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the files of the respondent in TIN/33774722695/ 2011-2012 dated 05.02.2019 and quash the same as illegal, invalid and violated the principles of natural justice and direct the respondent to reconsider the petition dated 25.01.2017 along with the representation dated 17.10.2017 afresh.

Prayer in W.P.No.9949 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the files of respondent in TIN/33774722695/ 2012-2013 dated 04.02.2019 and quash the same as illegal, invalid and violated the principles of natural justice and direct the respondent to reconsider the petition dated 25.01.2017 along with the representation dated 17.10.2017 afresh.

For Petitioner : Mr.D.Vijaya Kumar
(In both W.Ps)

For Respondent : Ms.Amirta Dinakaran
(In both W.Ps) Government Counsel

COMMON ORDER

This is a second round of litigation by the petitioner. Earlier, the petitioner was assessed by the respondent for the Assessment Years 2011-2012 & 2012-2013 vide orders dated 21.11.2014.

2. It is the case of the petitioner that the petitioner is exempted from payment of tax and from filing returns under Section 21 and 3(1)(b) of the TNVAT Act, 2006 as the value of sale within the State was below Rs.10,00,000/- during the respective Assessment Years.

3. The learned counsel for the petitioner submits that earlier an application under Section 84 of the TNVAT Act, 2006 was filed and since the application was not disposed by the respondent, the petitioner filed W.P.Nos.10740 and 10741 of 2017 which came to be disposed by an order dated 27.04.2014.

4. The learned counsel for the petitioner further submits that pursuant to the aforesaid order, a notice dated 30.06.2017 was issued to the petitioner, to which the petitioner had sent a representation seeking further time and thereafter filed a representation dated 17.10.2017 which has been duly acknowledged by the respondent in Letter Delivery Book on 03.11.2017.

5. The learned counsel for the petitioner submits that despite the order passed by this Court in W.P.Nos.10740 and 10741 of 2017 on 27.04.2014, the impugned order has been passed by the respondent without following the Principles of Natural Justice by affording an opportunity of hearing to the petitioner.

6. Defending the impugned order, the learned Government Counsel for the respondent submits that the petitioner had failed to file returns and therefore the respondent is justified in passing appropriate orders under Section 22(4) of the TNVAT Act, 2006. It is further submitted there is no error apparent on the face of record and therefore Section 84 of the TNVAT Act was not maintainable. In the alternative, it was open for the petitioner to file an appeal under Section 22 (6) of TNVAT Act and therefore the writ petition is liable to be dismissed.

7. Heard the learned counsel for the petitioner and the learned Government Counsel for the respondent.

8. The submission of the learned Government Counsel for the respondent cannot be countenanced in the light of the specific directions of this court on 27.04.2017 in W.P.Nos.10740 and 10741 of 2017. Paragraph (3) from the said order reads as under:-

> "3. Though these writ petitions are filed challenging the orders of assessment dated 21.11.2014 and 22.12.2014 in respect of the assessment years 2011-2012 and 2012-2013 respectively, the learned counsel for petitioner submitted that suffice a direction is issued to the respondent to consider the application filed by the petitioner under Section 84 of the said Act and pass orders on the same on merits. It is seen that the petitioner has filed such application under Section 84 of the said Act on 25.01.2017 and that the application is still pending for consideration before the respondent. Therefore, without expressing any view on the merits of the matter, these writ petitions are disposed of, only with a direction to the respondent to consider the application filed by the petitioner under Section 84 of the said Act and pass orders on merits and in accordance with law, also after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

9. The said order makes it clear that order has to be passed after giving due opportunity of hearing to the petitioner. The impugned order has straight away proceeded to pass orders. Even otherwise, it is noticed that the impugned order has been passed in violation of Principles of Natural Justice and therefore the case has to be decided afresh.

10. As the impugned order is contrary to the order passed by this Court, the impugned order stands quashed and the case is remitted back to the respondent to pass appropriate orders on merits and in accordance with law after giving an opportunity of hearing to the petitioner. The petitioner is directed to cooperate with the respondent.

11. This Writ Petition stands disposed with the above observations by directing the respondents to pass appropriate orders preferably within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

The State Tax Officer [Additional],
Tindivanam assessment circle,
Nehru Road,
Tindivanam - 604 001.

+1 cc to Government Pleader Sr.NO. 58605

W.P.Nos.9948 & 9949 of 2019
and
W.M.P.Nos.10519 & 10520 of 2019

SSD(CO)
A.SK(10.12.2021)