THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.19842 of 2021
and
W.M.P.Nos.21101 and 21102 of 2021

M/s.Shri Rohith Spinners (Pvt) Ltd,
Represented by its Managing Director,
S.Anand,
S.F.No.448/1,2,3, Patharai Village, Veppadai,
Kumarapalayam, T.K.Namakkal,
Tamil Nadu-638 008. ...Petitioner

-Vs.-

Assistant Commissioner (ST)(Fac)
Office of the Assistant Commissioner(ST),
Tiruchengode Rural Circle,
Tiruchengode. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records comprised in Order GSTIN:33AACCA9811C1Z6 dated 16.09.2020 on the file of the respondent and quash the Order GSTIN:33AACCA9811C1Z6 dated 16.09.2020 and direct the respondent to pass fresh orders after providing a reasonable opportunity.

For Petitioner : Ms.P.M.Anuradha

For Respondent : Ms.Amirta Dinakaran,
Government Advocate

O R D E R

Ms.P.M.Anuradha, learned counsel on record for writ petitioner is before this Virtual Court.

2. Captioned main writ petition and writ miscellaneous petitions therein are in the Admission Board.

3. Learned counsel for writ petitioner submitted that writ petitioner-company migrated from 'the Tamil Nadu Value Added Tax Act, 2006, (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT'

for the sake of convenience and clarity] to 'Tamil Nadu Goods and Service Tax Act, 2017' [hereinafter 'TN Goods ST Act' for the sake of convenience and clarity]. 'Input Tax Credit' [hereinafter 'ITC' for the sake of convenience and clarity] and Tran-1 regarding ITC is the crux of the matter, but it is not necessary to dilate on those facts as the entire writ petition turns on a short point of 'NJP' ['Natural Justice Principles'] which is statutorily imperative and which is ingrained in the applicable provision of TN Goods ST Act.

4. Ms.Amirta Dinakaran, learned Revenue counsel accepted notice on behalf of the lone respondent and owing to the short point involved and the narrow compass on which the matter turns, the main writ petition was taken up (though the matter is in the admission board) with the consent of both the learned counsel.

5. The impugned order does not mention the provision of law under which it has been made as a caption, but there is a mention about Section 73 of TN Goods ST Act in the body of the impugned order. However, this Court is informed without any disputation or disagreement that the impugned order has been made inter alia under Section 73 of TN Goods ST Act.

6. Learned counsel for writ petitioner urges three points and they are as follows:

(a) The 'Show Cause Notice' [hereinafter 'SCN' for the sake of convenience and clarity] which preceded the impugned order i.e., SCN dated 11.10.2019 is vague and the impugned order deals with a matter not covered in SCN, the sequitur is the writ petitioner was not given an opportunity to meet/show cause what has been put against the writ petitioner qua impugned order;

(b) No 'personal hearing' [hereinafter 'PH' for the sake of convenience and clarity] was given qua making of the impugned order whereas it is statutorily imperative to give PH more so as the impugned order is adverse to writ petitioner;

(c) Post impugned order, the writ petitioner has sent a communication (inter alia communication dated 05.10.2020) bringing to the notice of the respondent several points on merits which ought to have been considered in the impugned order.

7. In response to the above, learned Revenue counsel on instructions, submits that there is nothing on record or the records do not reveal that PH has been given. Learned Revenue counsel also points out that the objection made by the writ petitioner has however been considered before making the impugned order.

8. In the considered view of this Court, aforementioned short point qua PH will suffice to dislodge the impugned order. The reason is PH is statutorily imperative under sub-section (4) of Section 75 of TN Goods ST Act and Section 75(4) reads as follows:

> 'Section 75. General provisions relating to determination of tax-
>
> (1)..........
>
> (2).........
>
> (3) ....
>
> (4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.'

9. There is no disputation or disagreement before this Court that Section 75 of TN Goods ST Act which is captioned 'General provision relating to determination of tax' applies to case on hand more so as adverse decision qua writ petitioner has been made.

10. Therefore, it is not necessary to discuss or debate upon the other two points raised by the writ petitioner but the writ petition can be disposed of by covering those two points also. In the light of the narrative thus far, the following order is passed:

(a) Impugned order being order dated 16.09.2020 bearing reference No.GSTN:33AACCA9811C1Z6/2017-18 is set aside solely on the ground that PH which is statutorily imperative under Section 75(4) of TN Goods ST Act has not been given though the order is adverse to writ petitioner;

(b) Though obvious, it is made clear that no opinion or view has been expressed in this order on the merits of the matter as the impugned order has been set aside solely on the ground that PH that is statutorily imperative has not been given;

(c) The respondent shall redo the exercise de novo and complete the same as expeditiously as respondent's business would permit and in any event within twelve weeks from today i.e., on or before 13.12.2021;

(d) As the respondent would be redoing the entire exercise i.e., de novo, it is open to the respondent to issue an additional SCN and give an opportunity to writ petitioner to meet the same;

(e) Though obvious, it is made clear that the points raised on merits by the writ petitioner by way of communication post impugned order can also be taken into account by the respondent while doing the aforementioned de novo exercise and making the order afresh;

11. Captioned Writ Petition allowed and disposed of with aforementioned directives. Consequently connected Writ Miscellaneous Petitions are disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

Assistant Commissioner (ST)(Fac)
Office of the Assistant Commissioner(ST),
Tiruchengode Rural Circle,
Tiruchengode.

+1 CC to The Special Government Pleaders(Taxes), sr 48268.

W.P.No.19842 of 2021
and
W.M.P.Nos. 21101 and 21102 of 2021

AD(CO)
LS(01/10/2021)