IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.20027 OF 2021
&
W.M.P.NOS.21283,21287,21288 OF 2021

(Through Video Conferencing)

Tvl. Sri. Jayalakshmi Hardwares,
44, Sri Saibaba Complex,
East Parallel Road,
Krishnagiri,
Tamil Nadu - 635 001.
Rep by its Proprietor M.Sivakumar.

... Petitioner

Vs

1. The Principal Commissioner Commercial Taxes,
Elizhagam, Chennai.

2. The Assistant Commissioner (ST)
Krishnagiri Circle,
Krishnagiri.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the record relating to the order of the 2nd respondent in TIN No.33363302051/2015-16, dated 20.09.2019 and quash the same.

For Petitioner : Mr.B.Ramessh Kumaar

For Respondents : Ms.Amirta Dinakar
Government Advocate

ORDER

This Writ Petition has been filed to issue a Writ of Certiorari to call for the record relating to the order of the 2nd respondent in TIN No.33363302051/2015-16, dated 20.09.2019 and quash the same.

2. The petitioner has challenged the impugned assessment order dated 20.09.2019, whereby, the proposal of the pre-assessment notice dated 26.08.2019 has been confirmed and accordingly the tax due has been arrived. The impugned order was also seeks to deny ITC claim on the purchase of the inputs used for sale.

3. The learned counsel for petitioner submits that the petitioner was a proprietor concern and that due to ill health and on account of family dispute, the petitioner could not appear before the respondents, pursuant to summons issued and also could not file a reply to the pre-assessment order dated 26.08.2019 and therefore, submitted that one more opportunity may be granted to the petitioner as admittedly the petitioner has reported a sales turnover of Rs.2,46,88,984/-. He further submits that the respondents having invoked Section 22 (3) of TNVAT Act at an equal amount based on the best judgement method cannot be sustained even if there was a failure on the part of the petitioner to respond to the summons and the pre-assessment notice. Therefore, prays for quashing the impugned order, dated 20.09.2019 and opportunity of giving fresh reply, therefore, fresh orders can be passed on merits.

4. On behalf of the respondents, the learned Government Advocate submitted that the petitioner's case was taken up for scrutiny in terms of Section 22 (3) of the TNVAT Act, and pursuant to the aforesaid exercise three separate summons were issued to the petitioner during the month of September-October 2017 and 2018. However, the petitioner failed to appear or produce any of the documents within the deadlines prescribed in the summons. It is under these circumstances, the pre-assessment notice dated 26.08.2021 was issued to the petitioner, and therefore, the 2nd respondent has passed an order dated 20.09.2019. The learned counsel for the respondents further submits that the petitioner has an alternate remedy before the Appellate Commissioner and therefore, prays that the writ petition may be dismissed. It is further submitted that the impugned order dated 20.09.2019, whereas, the writ petition has been filed only in September 2021, and therefore, even on the ground of laches, the writ petition is liable to be dismissed.

5. Heard learned counsel for the petitioner and the learned Government Advocate for the respondents. Perused the pre-assessment order dated 26.08.2019 and the impugned order dated 20.09.2019.

6. The facts are not in dispute. The petitioner has been negligent as three summons were already issued on 18.09.2017, 31.10.2017 and 08.10.2018. Though adequate opportunity was given

to the petitioner to furnish the documents/information called for, the petitioner failed to furnish the same. As the petitioner failed to furnish the documents, pre-assessment notice was issued to the petitioner on 26.08.2019, to which also the petitioner failed to reply. In the pre-assessment notice, the 2nd respondent had proposed an equal addition of Rs.2,46,88,984/- as addition to the taxable turnover and also proposed denial of input Tax credit in the absence of original tax invoices under Section 19 (10)(a) of the TNVAT Act, 2006. No doubt, the petitioner has been negligent and shown recalcitrant attitude in neither answering to the summons nor to the pre-assessment notice, nevertheless the additional of 100% based on the best judgement method cannot be countenanced. This has to be exercised in the manner known to law. That apart the facts indicate that the petitioner has disclosed a turnover of Rs.2,46,88,984/- in the returns. The petitioner would have also filed necessary documents to substantiate the proportionate input tax credit on purchases. The 2nd respondent is not altogether helpless to verify whether the credit has been availed properly or not, inasmuch as of the data gets captured in the web portal of the respondents. It is for the petitioner to corroborate the same. While, there is failure on the part of the petitioner to give reply there is also failure on the part of the respondents while adding 100% into the taxable turnover and while denying the ITC Credit for a sum of Rs.29,89,008/- in the guise of best judgment.

7. Considering the same, the impugned order is set aside and the case is remitted back to the respondents to pass a speaking order preferably within a period of 45 days from the date of receipt copy of this order. The petitioner is given one last opportunity to file appropriate reply within a period of 30 days from the date of receipt a copy of this order. The petitioner is also directed to file all the documents including original invoices to substantiate the petitioner was indeed entitled to Input Tax credit for a sum of Rs.29,89,008/-.

8. With the above observation, this Writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssn/nst

To

1. The Principal Commissioner Taxes,
   Elizhagam, Chennai.

2. The Assistant Commissioner (ST)
   Krishnagiri Circle,
   Krishnagiri.

+1cc to the Special Government Pleader(Taxes), S.R.No.59175

W.P.No.20027 of 2021
&
W.M.P.Nos.21283,21287,21288 of 2021

PCH(CO)
RLP(03/12/2021)