IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.22603 and 22605 of 2021
&
W.M.P.Nos.23837 and 23838 of 2021

Tvl. EIH Limited-Unit: Oberoi Flight Services
Represented by its Authorised Signatory Mr.Rohan Gupta
No.325, GST Road
Pallavaram
Chennai - 600 043 ... Petitioner in both WPs

Vs

The Assistant Commissioner (ST)
Pallavaram Assessment Circle
No.345, 3rd Floor, Integrated Commercial Taxes
and Registration Department Building [South Tower]
Nandhanam, Guindy Taluk
Chennai - 600 035 ...Respondent in both WPs

Common Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the Respondent's proceedings dated 02.08.2021 in TIN/33040842563/2013-14 and TIN/33040842563/2014-15 and quash the same.

For Petitioner : Ms.D.S.Vipula in both WP's

For Respondent : Ms. Amirta Dinakaran
Government Advocate in both WP's
for Sole Respondent

COMMON ORDER

This common order will govern the captioned two main writ petitions and writ miscellaneous petitions therein.

2. The issue is common as in both the captioned main writ petitions orders of revision/re-assessment made inter alia under Section 27 of 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2005) {which shall hereinafter be referred to as 'TNVAT Act' for the sake of brevity and clarity} both dated 02.08.2021 pertaining to two Assessment Years, namely 2013-14 and 2014-15 have been assailed.

3. Ms.D.S.Vipula, learned counsel for writ petitioner in both the captioned writ petitions submits that there are three grounds on which the impugned orders are being assailed and they are as follows:

a) The Department had earlier issued a notice dated 19.08.2016, writ petitioner replied vide reply dated 30.09.2016 and the matter was given quietus. The writ petitioner expected that the earlier explanation will stand good for the case on hand also;

b) The writ petitioner is only providing services and TNVAT Act or charge thereunder are not attracted;

c) The writ petitioner could not respond to three pre-assessment / pre-revision notices dated 06.01.2021 owing to Coronavirus pandemic and consequent lock down (collectively referred to as 'Covid -19 pandemic' situation) resulting in man power shortage which the writ petitioner could neither portend nor presage.

4. Ms.Amirta Dinakaran, learned Revenue counsel accepts notice on behalf of lone respondent in both the writ petitions. Learned Revenue counsel points out that earlier notice dated 19.08.2016 turns on a different point i.e., whether goods were supplied qua consuming company whereas the present notice turns on whether it is qua passengers of writ petitioner's client's airlines.

5. It is really not necessary to go into above aspect of the matter as the submission that a reply given in 2016 will hold good does not find favour with this Court as the writ petitioner has to necessarily respond to a pre-revision notice, which is issued in accordance with the statutory requirement under common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act. Furthermore, in the light of the order that I propose to pass, expressing any opinion on this can impact the de novo re-assessment.

6. Regarding the argument that writ petitioner is only providing service, learned Revenue counsel points out that it turns on merits and it may not fall for consideration in a challenge to impugned order in writ jurisdiction. I have no difficulty in accepting this submission. I leave it open for de novo assessment.

7. This leaves this Court with the last submission i.e., writ petitioner not responding to the notice to show-cause. As already alluded to supra, vide common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act, it is statutorily imperative to give a reasonable opportunity to

show-cause before a revision order is passed under Section 27 of TNVAT Act. The respondent has no doubt complied with this requirement by issuing 06.01.2021 notices. In the case on hand, a perusal of the impugned order reveals that the matter inter alia pertains to reconciling difference in sales turn over between profit and loss account and monthly returns. Therefore, this reconciliation can be done if the writ petitioner is permitted to respond to 06.01.2021 notices albeit by putting the writ petitioner on some terms rather than prolonging the matter.

8. Learned counsel for writ petitioner submits that the writ petitioner would send their response inter alia meeting the aforementioned reconciliation point within one week from today to the respondent under due acknowledgement i.e., on or before 29.10.2021.

9. Thereafter, the respondent shall consider the reply on its own merits, in accordance with law and conclude the proceedings one way or the other within a fortnight therefrom i.e., by 12.11.2021.

10. To be noted, this order will not serve as a precedent as it is being passed in the light of the unique facts and circumstances of this case one of which is reconciliation of difference between profit and loss accounts and monthly returns being one of the issues.

11. Following common order is passed:

a) Impugned orders being orders dated 02.08.2021 bearing reference TIN/33040842563/2013-14 and TIN/33040842563/2014-15 are set aside solely to facilitate the writ petitioner to send in its replies to 06.01.2021 pre revision notices bearing reference TIN/33040842563/2013-14 and TIN/33040842563/2014-15 within a week from today i.e., by 29.10.2021.

b) The writ petitioner shall send in its replies to 06.01.2021 pre revision notices within one week from today under due acknowledgement i.e., on or before 29.10.2021.

c) The respondent shall consider the replies, redo i.e., do the revision exercise de novo and conclude the proceedings qua Section 27 legal drill within a fortnight therefrom as expeditiously as business of the respondent would permit and in any event, within a fortnight from 29.10.2021 i.e., on or before 12.11.2021.

d) The writ petitioner shall pay costs of Rs.10,000/- (Rupees Ten Thousand only) in each of the writ petitions (Rs.20,000/- in all) to Blue Cross of India, No.72, Velachery Road, Guindy, Chennai -32 within one week from today i.e., on or before 29.10.2021. If this condition is not complied, the respondent will be under no obligation to consider the replies of the writ petitioner and do the de novo exercise.

12. Captioned writ petitions are disposed of with the aforesaid directives. Consequently, captioned WMPs are disposed of as closed. There shall be no order as to costs.

Though the captioned writ petitions are disposed of, Registry to list these matters under the caption 'FOR REPORTING COMPLIANCE' on 29.10.2021.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner (ST)
Pallavaram Assessment Circle
No.345, 3rd Floor, Integrated Commercial Taxes
and Registration Department Building [South Tower]
Nandhanam, Guindy Taluk, Chennai – 600 035

+1cc to Ms.D.S.Vipula, Advocate SR.No.54996

+1cc to Special Government Pleader (Taxes)SR.No.54692

W.P.Nos.22603 and 22605 of 2021 &
W.M.P.Nos.23837 and 23838 of 2021

JPL(CO)
GMY(28/10/2021)