IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

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THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.21690 of 2021
and
W.M.P.No.22867 of 2021

M/s.Phoenix Medical Systems Pvt. Ltd.,
represented by its Managing Director,
DP 42, SIDCO Industrial Estate,
Thirumudivakkam,
Chennai – 600 132. ... Petitioner

-Vs.-

The Assistant Commissioner (ST) (FAC),
K.K.Nagar Assessment Circle,
5th Floor, PAPJM Annexe Building,
No.1, Greams Road,
Chennai-600 006. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in his proceedings in CST No.588887/2009-10, quash the order dated 12.08.2021 made therein.

For Petitioner	:	Mr.R.L.Ramani, Senior Counsel for Mr.B.Raveendran
For Respondent	:	Ms.Amirta Dinakaran Government Advocate

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ORDER

This order will govern the captioned main writ petition and writ miscellaneous petition therein.

2. Mr.R.L.Ramani, learned Senior advocate appearing on behalf of learned counsel on record for writ petitioner is before this Virtual Court.

3. In the captioned main writ petition, a 'revision/re-assessment order dated 12.08.2021 bearing reference No.CST.588887/2009-10' [hereinafter 'impugned order' for the sake of convenience and clarity] has been called in question.

4. This Court is informed that the impugned order has been made under Section 27 of 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT' for the sake of convenience and clarity]. The impugned order pertains to assessment year 2009-2010. Learned Senior counsel submits that the captioned main writ petition has a chequered history, as an 'order dated 29.10.2012

bearing reference No.CST.588887/2009-2010' [hereinafter 'earlier impugned order' for the sake of convenience and clarity] was made, a writ petition being W.P.No.3538 of 2013 was filed in this Court assailing the same and that writ petition was disposed of by another Hon'ble Single Judge by an order dated 23.07.2019. In the earlier impugned order, it was held that the export documents should have been furnished before passing original assessment order. The dealer was issued with pre-assessment notice dated 12.10.2011 to file the documents. On this ground, in the earlier impugned order, the export documents filed later were not accepted.

5. In the aforementioned earlier writ petition disposed of by another Hon'ble Single Judge, operative portion contained in paragraph No.3 is of relevance. I deem it appropriate to extract and reproduce the entire order which reads as follows:

'The limited prayer sought for in the present writ petition is that though the petitioner has filed the export documents before the respondent herein, the same were rejected on the ground that the

dealer was given enough time to file the documents and there is no provision to accept the export documents after passing of original assessment order. It is seen that the petitioner had earlier produced the C-forms in time, which have been verified and accepted. Insofar as the remaining turnover is concerned, the export documents were filed belatedly which has been rejected.

2. This Court is of the view that substantive justice would be rendered, if the petitioner is given opportunity to establish that he is entitled for the benefit under these export documents and therefore, taking a lenient view, this Court is inclined to remit the matter back to the respondent herein for fresh consideration of the export documents.

3. In the light of the above observations, the matter is remanded back to the respondent herein for fresh consideration with the export documents already produced by the petitioner, which exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. On the time of such consideration, the respondents shall extend due opportunity to the petitioner for personal hearing. Such refusal to look into these documents would amount to denial of opportunity, which would be in violation of principles of natural justice and this Court will not be entitled to exercise its jurisdiction under Article 226 of the Constitution of India, in view of the fact that there is an appeal remedy.

4. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition stands closed.'

6. Post aforementioned earlier order of this Court, impugned order in the captioned main writ petition has been made. To be noted, earlier order of this Court has been cited as No.2 qua Reference in the impugned order. Notwithstanding this, there appears to be one error in the impugned order, which will be alluded to infra in this order.

7. In the light of short and narrow compass on which the captioned main writ petition turns, this Court directed Ms.Amirta Dinakaran, learned Revenue counsel to accept notice. Learned Revenue counsel accepted notice on behalf of the lone respondent, with the consent of learned counsel on both sides, the main writ petition was taken up.

8. One error qua impugned order is that the respondent in the impugned order has again held that dealer has not produced any documentary evidence, though the documentary evidence is already before the respondent this Court has captured this factum in the earlier order and sent the matter back to respondent *inter alia* for considering

the same.

9. It is therefore imperative that the respondent looks into the documents which are already before authority and deals with the same in accordance with law on its own merits for exercising his powers under Section 27 of TNVAT Act.

10. Owing to the aforementioned infraction, the impugned order is set aside and the matter is sent back to the respondent with a directive to *de novo* do Section 27 legal drill, by considering *inter alia* export documents which have already been filed before the respondent by writ petitioner-dealer. This *de novo* exercise shall be commenced and completed as expeditiously as the business of lone respondent would permit and in any event, within three months from today i.e., on or before 07.01.2022.

11. Captioned Writ Petition is disposed of with the aforementioned directives. Consequently, connected writ miscellaneous petition is

disposed of as closed. There shall be no order as to costs.

07.10.2021

Speaking/Non-speaking order
Index: Yes/No
Internet : Yes/No
mk/nsa

To

The Assistant Commissioner (ST) (FAC),
K.K.Nagar Assessment Circle,
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Chennai-600 006.

M.SUNDAR.J.,

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