IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.21975 OF 2021
&
W.M.P.NO.23180 OF 2021

M/s.Vetal Textiles Electronic
Represented by its Managing Director
Mr.S.Raghuraam Raja
No.6, Dr.Munusamy Garden Street
Coimbatore

... Petitioner

Vs

The Assistant Commissioner (ST) (FAC)
P.N.Palayam Circle
Coimbatore.

... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in CST 642012/2014-15 and quash the impugned order dated 15.07.2021 passed therein.

For Petitioner : Mr.B.Raveendran

For Respondent : Ms.Amirta Dinakaran
Government Advocate

ORDER

Captioned main writ petition has been filed assailing an 'order dated 15.07.2021 bearing reference CST 642012/2014-15' (hereinafter 'impugned order' for the sake of convenience and clarity).

2. Aforementioned impugned order is yet another case which does not mention the provision of law under which it has been made. This Court deems it appropriate to use the expression 'yet another' as it is noticed that in a majority of/large number of cases of this nature the provision of law and statute under which the order is made is not mentioned. Be that as it may, this position makes the matter on hand a little more complex owing to a note in the impugned order and more particularly, Note No.1, which says that the impugned order is subject to revision under Section 27 of 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' {for the sake of convenience and clarity} read with Section 9(2) of 'Central Sales Tax Act, 1956' ('CST Act' for the sake of brevity).

3. Mr.B.Raveendran, learned counsel for writ petitioner submits that a perusal of the order makes it clear that the impugned order itself has been made under Section 27 of TNVAT Act and the writ petitioner has not been given an opportunity to show-cause, much less a reasonable opportunity to show-cause before making of the impugned order.

4. Ms.Amirta Dinakaran, learned State counsel accepts notice on behalf of lone respondent. Learned Revenue counsel, on instructions, submits that the impugned order has, in fact, been made under Section 27 of TNVAT Act. Learned Revenue counsel, on instructions, further submits that the impugned order has been made under sub-section (1) of Section 27 of TNVAT Act. Therefore, the aforementioned Note 1 in the impugned order is clearly out of context.

5. Owing to the short and narrow compass on which captioned writ petition turns, main writ petition is taken up with the consent of learned counsel on both sides. Common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act reads as follows:

> 'Provided that no order shall be passed under sub-section (1) and (2) without giving a dealer a reasonable opportunity to show cause against such order'

6. The expression 'a reasonable opportunity to show cause' occurring in aforementioned proviso has been explained by this Court in State Bank of India officers case vide order dated 01.08.2019 in W.P.No.22634 of 2019 . This Court is informed that this order has not been reported in any law journal. Therefore, this Court deems it appropriate to give the writ petition number and date of the order for convenience of all concerned. Be that as it may, this Court is also informed that this order was carried in appeal by way of an intra-court appeal vide W.A.No.4073 of 2019 and a Hon'ble Division Bench of this Court dismissed the writ appeal vide order dated 16.12.2019. Therefore the order made by this Court in State Bank of India officers case has merged with the order of Hon'ble Division Bench.

7. It may not be necessary to delve further into State Bank of India officers case as that was a case where 'reasonable opportunity to show cause' occurring in the common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act and the expression 'reasonable opportunity of being heard' occurring in the proviso to sub-section (4) of Section 22 of TNVAT Act were considered, distinguished and explained. That may not be of great significance in the case on hand as the simple point urged by learned counsel for writ petitioner is, impugned order has been made without giving opportunity to show-cause, much less a reasonable opportunity to show-cause. A careful perusal of the impugned order makes it clear that no prior notice has been issued and obviously, no opportunity has been given to the writ petitioner. On instructions, learned Revenue counsel submits that no notice was issued to the writ petitioner prior to the impugned order. This by itself resolves the lis between the parties as there is clear infraction of common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act.

8. In the light of the narrative thus far, following order is passed:

a) The impugned order being order dated 15.07.2021 bearing reference CST 642012/2014-2015 is set aside solely on the ground that the writ petitioner has not been given an opportunity to show-cause, much less a reasonable opportunity to show-cause before the impugned order was made;

b) In the light of the aforementioned limb to the impugned order, this Court makes it clear that this Court (in this order) has not expressed any opinion or view on the merits of the matter;

c) The lone respondent shall now embark upon the exercise of making a revision under Section 27 of TNVAT Act de novo after giving a reasonable opportunity to show-cause to the writ petitioner as provided for in the common proviso to sub-sections (1) and (2) of Section 27;

d) Aforementioned de novo legal drill shall be commenced and completed as expeditiously as possible or in other words, as expeditiously as the business of the respondent would permit and in any event, within four weeks from today i.e., on or before 17.11.2021.

Captioned writ petition is disposed of with the above directives. Consequently, connected WMP is disposed of as closed. There shall be no order as to costs.

Sd/-
Deputy Registrar(CS)

// True Copy //

Sub Assistant Registrar

gpa

To
The Assistant Commissioner (ST) (FAC)
P.N.Palayam Circle
Coimbatore.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.54011
+1cc to the Government Pleader(T), S.R.No.54144

W.P.No.21975 of 2021 &
W.M.P.No.23180 of 2021

PMK(CO)
RLP(02/11/2021)