IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.23913 of 2021
&
W.M.P.No.25237 of 2021
(Through Video Conferencing)

Tvl. Hr. Battries,
Rep by its Proprietor Mr. M. Harikrishnan,
No.282, G.S.T. Road,
Chrompet. Chennai - 44. ...Petitioner

Vs

The State Tax Officer,
Pallavaram Assessment Circle,
Chennai - 44. ...Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent demand notice TIN/33380886899/2014-15 dated 02.09.2021 and quash the same being illegal, invalid, and violated the principles of natural justice.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.D.Ravichander
Government Counsel

ORDER

The writ petitioner has challenged the impugned order impugned demand notice dated 02.09.2021 wherein a sum of Rs. 1,25,433/- has been demanded from the writ petitioner as arrears of tax of penalty. It is the case of the writ petitioner that for the assessment year 2014-15 earlier assessment order dated 12.09.2016 was passed wherein a sum of Rs. 2,57,847/- was confirmed along with Input Tax Reversal of 2,41,233. In all a sum of Rs. 4,99,351 was demanded from the writ petitioner. Aggrieved by the aforesaid order dated 12.09.2016 the writ petitioner preferred an appeal in A.P.No. 102 of 2016 (VAT) before the Appellate Commissioner who by an order dated 28.09.2016 allowed the appeal, in so far as Input Tax Reversal is concerned. Aggrieved by the aforesaid order a further appeal was filed before Sales Tax Appellate Tribunal in S.T.A No. 824

of 2016 by the respondent department. The Appellate Tribunal by this order dated 24.04.2017 dismissed the appeal. It is submitted that being the case question of demanding a sum of Rs.1,12,433 without any order is unsustainable. It is further submitted that the demand of sum of Rs.2,57,872 confirmed originally on 12.09.2016 has been set aside and the matter has been remanded back to the respondent to pass a fresh order. It is submitted without passing a fresh order, impugned demand notice has been issued to the writ petitioner. It is further submitted that there is no explanation forthcoming as to the basis in the demand notice as the how the aforesaid amount of 4,99,315 was being demanded from the writ petitioner as arrears of tax. Appearing on behalf of the respondent, learned counsel for the respondent submits that once the case has been remanded back to the respondent the entire amount has originally confirmed for a sum of Rs. 4,99,315 (2,57,872 + 2,41,433) has to be re-examined by the original authority afresh.

2. Heard learned counsel for writ petitioner and respondent.

3. It is noticed that the impugned demand notice has been issued for the assessment year 2014/15. The aforesaid notice has been issued without any basis inasmuch as the respondent has not passed afresh assessment order pursuant to remand order dated 28.09.2016 of the Appellate Commissioner in A.P.No. 102 of 2016. Consequently the question of imposing penalty under Section 27 (3) on the aforesaid amount also cannot be countenanced at this stage. Unless a demand is quantified and crystallized by the respondent pursuant to the aforesaid remand order date 28.09.2016, the question of writ petitioner paying further amount as the arrears of tax cannot be countenanced. Considering the same the impugned order stands quashed. However, while quashing the aforesaid demand notice, the respondent is directed to pass a speaking order in terms of the order dated 28.09.2016 in A.P.No.102 of 2016 (VAT) within a period of four weeks from the date of receipt of a copy of this order. Needless to state, such order shall be passed after affording an opportunity of hearing to the writ petitioner.

Thus the writ petition stands allowed with the above directions, consequently connected miscellaneous petition is also closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

nst

To

The State Tax Officer,
Pallavaram Assessment Circle,
Chennai - 44.

+1cc to M/s.D.Vijayakumar, Advocate, S.R.No.58266

+1cc to the Spl. Government Pleader, S.R.No.58494

W.P.No.23913 of 2021
&
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CP(CO)
RGA(03/12/2021)