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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.24749 OF 2021
AND
W.M.P.NO.26029 OF 2021

(Through Video Conferencing)

M/s.Phoenix Medical Systems Private Limited,
Represented by its Chief Financial Officer,
D.Nandagopal, DP 42,
SIDCO Industrial Estate,
Thirumudivakkam,
Chennai – 600 132. ... Petitioner

.Vs.

The Assistant Commissioner (ST) (FAC),
K.K.Nagar Assessment Circle,
5^{th} Floor, PAPJM Annexure Building,
No.1, Greams Road,
Chennai – 600 006. ... Respondent

PRAYER:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in the impugned rectification order CST 588887/2010-2011 dated 12.10.2021 on the file of the respondent and quash the impugned rectification order CST 588887/2010-2011 dated 12.10.2021 passed by the respondent and direct the respondent to pass fresh orders after in accordance with law.

For Petitioner : Mr.P.Purushotham

For Respondent : Mr.D.Ravichander
Special Government Pleader

ORDER

Mr.D.Ravichander, learned Special Government Pleader takes notice on behalf of the respondent.

2. The petitioner has challenged the impugned rectification order dated 12.10.2021 bearing reference in CST No.588887/2010-2011.

3. The petitioner had filed an application for rectification of the order under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, (hereinafter referred to as the TNVAT Act, 2006).

4. The petitioner had filed the aforesaid application on 01.10.2021 which was received by the respondent on 06.10.2021 and thereafter the respondent has passed the impugned rectification order on 12.10.2021.

5. Appearing on behalf of the petitioner, the learned counsel submits that the order has been passed without affording an opportunity of personal hearing to the petitioner.

6. The learned counsel for the petitioner further submits that the rectification order has been passed without application of mind and contrary to the well-settled Principles of Law enunciated by this Court in its order dated 17.12.2015 in W.P.Nos.38722 to 38726 of 2015 wherein, a reference was made to the decision of the Hon'ble Supreme Court in The Commissioner of Central Excise, Calcutta Vs A.S.C.U Limited, (2003) 151 ELT 481 and that of another decision of this Court in M/s.Sujana Towers Limited Vs. Assistant Commissioner (CT) passed in W.P.No.30304 of 2014 dated 20.11.2014.

7. The learned counsel for the petitioner submits that if the respondent had any doubts as to whether the petitioner had paid tax or not for a period from June to August 2010, the respondent could have called the petitioner for a personal hearing.

8. Appearing on behalf of the respondent, the learned Special Government Pleader submits that proviso to Section 84(1) of the TNVAT Act, 2006 makes it clear that personal hearing has to be given only in the case where there is a proposal to enhance the tax and therefore it is not mandatory on the part of the respondent to extend the privilege of personal hearing at the time of consideration of an application under Section 84 of the TNVAT Act, 2006.

9. The learned Special Government Pleader for the respondent submits that there is no error apparent on the face of record and therefore submits that the writ petition is liable to be dismissed.

10. The learned Special Government Pleader for the

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respondent further submitted that the petitioner has a alternate remedy before the Appellate Deputy Commissioner (ST) under the provisions of the TNVAT Act, 2006 and therefore on this count also this writ petition is liable to be dismissed.

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11. By way of rejoinder, the learned counsel for the petitioner submits that proviso to Section 84(1) of the TNVAT Act, 2006 will apply only in a case where the proceedings for rectification of order is by the respondent to enhance the tax liability. The learned counsel further submits that in a case where application is made by an assessee, above proviso will not apply and therefore the restrictions contained therein cannot be imposed on the respondent.

12. The learned counsel for the petitioner further submits that had the respondent given an opportunity to the petitioner, the petitioner would have furnished all the documents.

13. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent. I have perused the impugned order and Section 84 of the TNVAT Act, 2006.

14. The petitioner has filed the rectification application under Section 84 of the TNVAT Act, 2006 on 01.10.2021. The respondent has proceeded to pass the impugned rectification order on 12.10.2021 without calling upon the petitioner to furnish the documents even after no personal hearing was granted by the respondent. The respondent should have called upon the petitioner to file the documents and thereafter passed appropriate orders for rectification of the order.

15. Considering the same, this Writ Petition is allowed by directing the respondent to pass appropriate orders within a period of thirty days from the date of receipt of a copy of this order. The learned counsel for the petitioner is therefore directed to furnish all the documents within a period of fifteen days from the date of receipt of a copy of this order with the respondent. It is needless to state that such order shall be passed after giving an opportunity of personal hearing to the petitioner. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rgm/arb

https://hcservices.ecourts.gov.in/hcservices/

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To

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

+1cc to M/s.P.M.Anuradha, Advocate, S.R.No.59594
+1cc to the Special Government Pleader, S.R.No.60197

W.P.NO.24749 OF 2021 AND
W.M.P.NO.26029 OF 2021

RR(CO)
PBS/07/12/2021