IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.24372 OF 2021
AND
W.M.P.NO.25678 OF 2021

(Through Video Conferencing)

Tvl.R.Mahimaidoss
... Petitioner

Vs

The State Tax Officer,
Tondiarpet Assessment Circle,
Elephant Gate Police Station Road,
Vepery, Chennai - 3.
... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondent proceedings in CST: 33251201978/2017-2018 dated 22.09.2021 and quash the same being illegal, invalid, and violated the principles of natural justice and contrary to the law and direct the respondent to revise as per the petitioner's objections/representation dated 21.12.2018 and 17.09.2021.

For Petitioner : Mr.D.Vijayakumar

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 had earlier suffered from an Assessment Order dated 10.06.2021 passed by the respondent in CST/33251201978 for the Assessment Year 2017-2018.

3. It is the case of the petitioner that while filing monthly returns under the Central Sales Tax Act, 1956 on 07.05.2017, 18.06.2017 and 20.07.2017 for the months of April, May and June respectively, the petitioner by mistake had included the turnover in the Tamil Nadu Value Added Tax Act, 2006 also as a turnover under the CST Act, 1956. Since the petitioner had filed the returns with an erroneous entries for all the three months, the petitioner was issued with a notice dated 04.12.2018 bearing reference in CST/33251201978/2017-2018, which culminated in the impugned Assessment Order dated 10.06.2021.

4. The learned counsel for the petitioner submits that the said order was a subject matter of the writ petition in W.P.No.17227 of 2021 dated 18.08.2021.

5. The learned counsel for the petitioner further submits that prior to filing the above writ petition, the petitioner had also sent a representation dated 17.09.2021 to the respondent with a request to revise the assessment under Section 84 of the TNVAT Act, 2006 as has been made applicable for the assessment under the CST Act, 1956.

6. The learned counsel for the petitioner submits that by an order dated 18.08.2021 in W.P.No.17227 of 2021, an interim order was passed by directing the respondent to pass appropriate order within a period of four weeks. Under these circumstances, the aforesaid writ petition was later dismissed as infructuous on 15.11.2018. It is submitted that under these circumstances, the impugned Assessment Order has been passed.

7. The learned counsel for the petitioner submits that in the impugned Assessment Order, the respondent has stated that the order cannot be revised under Section 84 of TNVAT Act, 2006 and therefore the Assessment as completed on 10.06.2021 was to be confirmed and accordingly tax has to be paid by the petitioner.

8. The learned counsel for the petitioner submits that the mistake in the return by itself cannot be the basis for confirming the demand based on the entries in the respective returns and that the petitioner has made a typographical mistake by adding the VAT turnover for the respective months also as the CST turnover though has declared nil tax payable under the CST Act, 1956.

9. On the other hand, the Learned Special Government Pleader for the respondent submits that the petitioner has an alternate remedy before the Appellate Commissioner against the Impugned

Assessment Order passed on 22.09.2021.

10. The learned Special Government Pleader also submits that the petitioner has an alternate remedy under Section 22(6a) of the TNVAT Act, 2006.

11. By way of rejoinder, the learned counsel for the petitioner submits that when the earlier order was passed on 10.06.2021, the petitioner had sent a representation dated 15.07.2021 within the time specified therein. However, the respondent has now passed the impugned Assessment Order stating that when the system did not allow the dealer to file the revised return, it is not known that, how the dealer expects the Assessing Officer to accept the revised return manually that too now. The learned counsel for the petitioner submits that the case laws referred by the petitioner in support of the contention has been wrongly distinguished on the ground that they relate to the year 1968 when at that time, no time limit was fixed to file a revised return.

12. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent. I have perused the impugned Assessment Order and electronic returns filed by the petitioner for the months of April, May and June 2017 both under the TNVAT Act, 2006 and under the CST Act, 1956.

13. The turn over declared in the TNVAT returns is reflected as the turn over in the CST returns. In the TNVAT returns, the petitioner has also undertaken to pay the tax as the assessment is the self-assessment under the TNVAT Act. In the CST return, the petitioner has not assessed any tax as the petitioner was not liable to pay tax as there was no transactions of Inter-state Sales.

14. Since the petitioner has also filed an application under Section 84 of the TNVAT Act, nothing precluded the Officer from exercising the jurisdiction under Section 22(6a) of the TNVAT Act, 2006 to see whether any tax remained unpaid. There are no records to substantiate thus the petitioner had effected Inter-state Sales.

15. Considering the same, the Impugned Assessment Order dated 22.09.2021 is quashed and the case is remitted back to the respondent to pass appropriate orders by examining whether the petitioner is indeed entitled for a revision under Section 22 (6a) of the TNVAT Act, 2006. If there was no Inter-state Sales, the respondent shall drop the proceeding notwithstanding delay.

16. This exercise shall be carried out by the respondent within a period of thirty days from the date of receipt of a copy of this order. Needless to state that the petitioner shall also be heard before such orders are passed.

17. This Writ Petition stands allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

The State Tax Officer,
Tondiarpet Assessment Circle,
Elephant Gate Police Station Road,
Vepery, Chennai – 3.

+1cc to M/s.D.Vijayakumar, Advocate, S.R.No.59075

+1cc to the Special Government Pleader(Taxes), S.R.No.59404

W.P.No.24372 of 2021
and
W.M.P.No.25678 of 2021

VSN-II(CO)
RLP(08/12/2021)