IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.23877 of 2021
and
W.M.P.No.25183 of 2021

(Through Video Conferencing)

Avone Automobiles,
Rep.by its Partner A.Mohamad Azarudeen,
Nellikuppam Main Road,
Cuddalore-607 001. ...Petitioner

Vs

The State Tax Officer,
Cuddalore Town. ...Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the entire records of the respondent in TIN 33444382455/2016-17 dated 31.08.2021 and quash the order passed therein.

For Petitioner : Mr.A.P.Srinivas

For Respondent : Mr.Amirtha Dinakaran,
Government Counsel.

ORDER

This writ petition has been filed for issuance of a Writ of Certiorari, to call for the entire records of the respondent in TIN 33444382455/2016-17 dated 31.08.2021 and quash the order passed therein.

2. This is the second round of litigation before this Court. Earlier, the petitioner has filed writ petitions in W.P.Nos.4900 to 4905 of 2018 to quash the assessment order dated 19.01.2018 and the same was allowed by this Court vide order dated 05.04.2018 with the following observations:

> ''6. On a reading of the above statement made by the petitioner, it is crystal clear that the petitioner has not accepted the allegations made by

the Enforcement Wing Officials. Therefore, the Assessing Officer has committed serious error in stating that the petitioner themselves have admitted the discrepancies. This would be sufficient, even to the set aside the show cause notice. However, the fact remains that the petitioner submitted their objections and requested for personal hearing so that, they could discuss with the Assessing Officer and then, produce necessary record to reconcile the alleged purchase omission. However, the Assessing Officer did not take note of the tone and tenor of the objections given by the petitioner, but, mechanically, stated that the details given by them were not exactly tallied. The Assessing Officer should have made an endeavour atleast to test the details of the transactions, which tally, and he ought not to have completed the assessment by making such vague averments. In the light of the same, this Court is of the view that the impugned orders are completely flawed.

7. For the above reasons, the Writ Petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for fresh consideration, who shall first afford an opportunity of personal hearing to the petitioner, and if the petitioner requests for any details, the same shall be furnished, after which, further opportunity be granted and the assessment shall be redone in accordance with law and a speaking order should be passed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.''

3. Pursuant to the aforesaid order, the respondent had passed the impugned order. The operative portion of the order reads as under:

''6. Though reasonable opportunities were awarded to the dealer to file their reply / or to represent his contentions, the matter cited, the dealer neither filed any documentary evidences nor any proposals cited.

In view of the above, the original proposals contained in this office order dated 19.01.2018 is hereby confirmed and the total and taxable turnover of the dealer for the year 2016-17 is revised and refixed.''

4. The petitioner has challenged the impugned notice on the ground that the respondent has passed a non-speaking order even though a reply of the petitioner was already on record with the respondent as is evident from the discussion in the impugned order under the caption penalty. It is submitted that the respondent has passing an order demanding the tax, levied penalty under Section 22(5) of the TNVAT Act.

5. The learned Government counsel for the respondent submitted that the petitioner has an alternate remedy under Section 51 of the TNVAT Act. He further submits that the petitioner has failed to give any additional reply or any documentary evidence in support of the defence, and therefore, the impugned order has been passed and therefore, no latitude should be given to the petitioner by entertaining the writ petition. Therefore, the present writ petition is liable to be dismissed.

6. Heard the learned counsel for the petitioner and the learned Government Counsel for the respondent.

7. Pursuant to the quashing of the order dated 05.04.2018 in W.P.Nos.4900 to 4905 of 2018, the impugned order has been passed by the respondent. The impugned order precedes a notice dated 22.07.2021. The said notice called upon the petitioner to furnish the details to finalise the revised assessment for Assessment Year 2016-2017. Though the notice was issued and called upon the petitioner to furnish the details, the petitioner failed to file any reply. In the earlier round itself, the petitioner has filed a reply to the original notice issued under Section 27 of the TNVAT Act, 2006. While passing the impugned order, the respondent ought to have considered the same even if the petitioner had failed to file the reply in response to notice dated 22.07.2021, in pursuance of the order of this Court dated 05.04.2018.

8. Considering the same, the impugned order is liable to be declared as non-speaking order and therefore liable to be quashed.. Accordingly, the impugned order is quashed and the case is remitted back to the respondent to pass a speaking order within a period of 45 days from the date of receipt of a copy of this order. The petitioner is given one final opportunity to reply to the notice dated 22.07.2021 within a period of 15 days from the date of receipt of a copy of this order. The respondent is directed to pass appropriate orders on merits and in accordance with law within a period of 45 days from the date of receipt of a copy of this order. No further extension of time will be given to the petitioner. In case, the petitioner fails to give reply to the notice of the respondent dated 22.07.2021,

within 15 days, the respondent shall pass appropriate orders, based on the available records.

9. With the above observation, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

ssn

To

The State Tax Officer,
Cuddalore Town.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.58486
+1cc to the Special Government Pleader, S.R.No.58489

W.P.No.23877 of 2021
and
W.M.P.No.25183 of 2021

RR[co]
NSK 03/01/2022