IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.26812 & 26817 of 2021
and
W.M.P.Nos.28253 & 28258 of 2021

(Through Video Conferencing)

IP Softcom (India) Private Limited,
Represented by its Director,
A.Ravichandran,
Nos.18 & 19, Mahalakshmi Nagar Extension,
Noombal Village,
Thiruverkadu,
Chennai - 600 077. ... Petitioner in both W.Ps

Vs

The Assistant Commissioner (ST),
Vanagaram Assessment Circle,
176 MTH Road, Villivakkam,
Chennai - 600 049. ... Respondent in both W.Ps

Prayer in W.P.No.26812 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent herein in TIN:33111346003/2016-2017 dated 27.09.2019 quashing the same and direct the respondent herein to pass orders on the application filed under Section 84 of the TNVAT Act, 2006 dated 17.06.2021, 05.07.2021 and 20.10.2021.

Prayer in W.P.No.26817 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent herein in CST:846893/2016-2017 dated 31.03.2021 quashing the same and direct the respondent herein to pass orders on the application filed under Section 84 of the TNVAT Act, 2006 dated 17.06.2021, 05.07.2021 and 20.10.2021.

For Petitioner : Mr.N.Inbarajan
(In both W.Ps)

For Respondent : Mr.Richardson Wilson
(In both W.Ps) Additional Government Pleader

COMMON ORDER

Mr.Richardson Wilson, learned Additional Government Pleader takes notice on behalf of the respondent.

2. The petitioner has challenged the impugned Assessment Order dated 27.09.2019 for the Assessment Years 2016-2017 passed under the TNVAT Act, 2006 and the Assessment Order dated 31.03.2021 passed under the same Assessment Year under the Central Sales Tax Act, 1956.

3. The case of the petitioner appears to be that against these orders the petitioner had approached before the respondent under Section 84 of the TNVAT Act, 2006 on 17.06.2021 which has not been disposed by the respondent. It is further submitted that the petitioner has sent two reminders on 05.07.2021 and on 20.10.2021. The learned counsel for the petitioner submits that meanwhile the respondent had issued a notice dated 31.05.2019 under Section 27 of the TNVAT Act, 2006 and had called upon the petitioner to reply to the same by stating that the petitioner was liable to pay tax at 14.5% for having sold pre-recorded/recorded DVDs and CDs.

4. It is the specific case of the petitioner that though the name of the petitioner is IP Softcom (India) Private Limited and was engaged in selling packing materials liable to tax at 5% under Sl.No.13-A(v), Part-C, First Schedule of the TNVAT Act, 2006, the respondent had imposed tax at 14.5% by treating the petitioner having sold pre-recorded/recorded DVDs and CDs.

5. The learned counsel for the petitioner submits that the impugned orders are contrary to the entries in the First Schedule to the TNVAT Act, 2006.

6. Opposing the prayer, the learned Additional Government Pleader for the respondent submits that the impugned Assessment Orders are dated 27.09.2019 and dated 31.03.2021 under the TNVAT Act, 2006 and under the CST Act, 1956 respectively. It is further submitted that the petitioner has approached the Court belatedly and the issue involves disputed questions of fact which cannot be addressed before this Court as to the correct classification and adjudication of the rate of duty.

7. The learned Additional Government Pleader for the respondent further submits that the petitioner has also opted for rectifying both the orders by giving petition under Section 84 of the TNVAT Act, 2006 which has been followed up by the petitioner on 05.07.2021 and 20.10.2021 and therefore on this count also there is no scope for any interference with the

orders passed by the respondent.

8. The learned Additional Government Pleader for the respondent further submits that as far as the non-production of C-Forms is concerned, it is always open for the petitioner to approach the authorities for rectification of the order as and when the C-Forms are received as per the decision of this Court in State of Tamil Nadu Vs Arulmurugan and Company and another, passed in Tax Cases Nos.78 & 196 of 1980, dated 02.09.1982.

9. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

10. The petitioner has already opted to resolve the dispute arising out of the impugned Assessment Orders dated 27.09.2019 for the Assessment Years 2016-2017 under the TNVAT Act, 2006 and the order passed by the respondent for the same Assessment Year 2016-2017 under the CST Act, 1959 on 31.03.2021 under Section 84 of the TNVAT Act, 2006 as made applicable for both enactments. As such, there is no merits in the present writ petitions.

11. That apart, there are several disputed questions of facts are involved as to whether the petitioner was indeed engaged in selling packing materials/pre-recorded or recorded DVDs/CDs to its customers. It is also noticed that the petitioner had failed to respond to the notice dated 31.07.2019 issued by the respondent asking the petitioner to file objection before the respondent. Therefore, these writ petitions are liable to be dismissed.

12. Since the petitioner's petitions under Section 84 of the TNVAT Act, 2006 are pending before the respondent, while dismissing these Writ Petitions, I am inclined to direct the respondent to pass appropriate orders on the objections filed under Section 84 of the TNVAT Act, 2006 within a period of six weeks from the date of receipt of a copy of this order.

13. These Writ Petitions stand disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

arb

To

The Assistant Commissioner (ST),
Vanagaram Assessment Circle,
176 MTH Road, Villivakkam,
Chennai - 600 049.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.67272

+1cc to the Special Government Pleader (Taxes), S.R.No.67887

W.P.Nos.26812 & 26817 of 2021
and
W.M.P.Nos.28253 & 28258 of 2021

AK-II(CO)
SU(12/01/2022)