IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.29552 & 29558 of 2019
and
W.M.P.Nos.29430, 29431, 29436 & 29437 of 2019

(Through Video Conferencing)

M/S. Bagya Trading Company,
Represented by its Proprietor,
Mr.P.Shanmugam,
No.242, East Pondy Road,
Villupuram - 605 602. ... Petitioner in both W.Ps.

Vs

The Assistant Commissioner (CT),
Villupuram - I Assessment Circle,
Villupuram. ... Respondent in both W.Ps.

Prayer in W.P.No.29552 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN No.33114680766/2006-2007 dated 24.04.2015 and quash the same as passed contrary to the principles of natural justice and further direct the respondent to consider the objections dated 29.08.2013 filed by the petitioner and pass a fresh assessment order in accordance with law.

Prayer in W.P.No.29558 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN No.33114680766/2007-2008 dated 24.04.2015 and quash the same as passed contrary to the principles of natural justice and further direct the respondent to consider the objections dated 29.08.2013 filed by the petitioner and pass a fresh assessment order in accordance with law.

For Petitioner (in both W.Ps)	:	Mr.P.Raj Kumar
For Respondents (in both W.Ps)	:	Ms.Amirta Poonkodi Dinakaran Government Advocate

COMMON ORDER

The petitioner had earlier challenged notice issued to the petitioner for recovering the ineligible credit availed by the petitioner contrary to Section 19(11) of the Tamil Nadu Value Added Tax Act, 2006.

2. These writ petitions were disposed along with a batch by this court by its order dated 17.07.2013 in the case of USA Agencies and Ors vs. Commercial Tax Officer, (2013) 66 VST 75 (Mad). While dismissing these writ petitions challenging the vires of Section 19(11) of the TNVAT Act, 2006, the Court also gave liberty to the persons who had suffered adverse orders to file an Appeal and those who have received notice to reply within the period of thirty days from the date of receipt of a copy of the order.

3. It is the specific case of the petitioner that the petitioner had also sent a reply dated 29.08.2013 which was duly acknowledged by the respondent on 12.09.2013.

4. It is submitted that the impugned order has now been passed by the respondent after a lapse of 1 ½ years and without the following principles of natural justice. He therefore submits that the impugned order is liable to be quashed.

5. Opposing the prayer, the learned Government Advocate for the respondent submits that the issue is squarely covered against the petitioner in terms of the above decision cited by the learned counsel for the petitioner himself and therefore there is no merits in this writ petition. Asfaras the penalty is concerned, it is submitted that the respondents are not required to extend the benefit of personal hearing as long as the opportunity to show cause has been given. It is submitted that opportunity to reply to show cause notice is sufficient.

6. It is submitted that in these cases admittedly the show cause notice was issued as early as on 29.06.2011 and that in terms of the aforesaid decision of this Court, the petitioner was also given an opportunity to show cause which has been considered in the impugned order and therefore there is no merits in these present writ petitions.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

8. The petitioner is not entitled to credit availed by the petitioner beyond the period of limitation. Therefore, on merits as far as the demand of the input tax credit is concerned there is no case made out by the petitioner.

9. Under these circumstances, the petitioner is directed to pay the amount confirmed in the impugned orders for a sum of Rs.70,720-00 and Rs.2,84,642-00 for the respective Assessment Year. As far as the imposition of penalty which appears to be 200% of the amount confirmed in the impugned order is concerned the petitioner appears to have made out a case for interference.

10. Considering the fact that the petitioner's representation dated 29.08.2013 has not been considered by the respondent, while passing the order under Section 27(4) as it stood during the material period though did not specifically contemplate the benefit of personal hearing and also considering the fact that the order has been passed long after the notices were issued in view of the pendency of the writ petition and after the reply was filed by the petitioner vide reply dated 29.08.2013 which duly acknowledged by the respondent on 12.09.2013, I am inclined to interfere by remitting the case back to the respondent to pass a speaking order within a period of forty five (45) days from the date of receipt of a copy of this order. The petitioner is permitted to make additional representation if any.

11. In the result, these writ petitions stand partly allowed by quashing the impugned order in so far as the imposition of penalty is concerned. The petitioner shall pay the amount of tax/input tax sought to be recovered within a period of forty five (45) days from the date of receipt of a copy of this order. Liberty is also given to the petitioner to make appropriate submissions as far as penalty is concerned. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

rgm/jas
To

The Assistant Commissioner (CT),
Villupuram - I Assessment Circle,
Villupuram.

+1cc to Mr.P.Raj Kumar, Advocate SR.No.67369
+1cc to Special Government Pleader SR.No.67883

W.P.Nos.29552 & 29558 of 2019
and
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& 29437 of 2019

EV(CO)
GMY(19/01/2022)