BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **10.11.2021**
CORAM
THE HON'BLE MR. JUSTICE M.SUNDAR
W.P(MD) No.17312 of 2014
and M.P.(MD)No.1 of 2014

M/s.Vertex Pharmaceuticals,
Represented by its Proprietor S.Rajeswari.
Trichy-620 008. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Palakkarai – II Assessment Circle,
Trichy. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus, calling for the records in TIN No.33353542242/2013-2014 dated 13.08.2014 and to quash the same as illegal, arbitrary and to direct the respondent to pass assessment order afresh after affording opportunity of being heard as contemplated under the TNVAT Act to the petitioner.

For Petitioner : Mr.N.Sudalaimuthu
For Respondent : Mr.A.Baskaran,
Government Advocate (Civil Side).

O R D E R

Mr.N.Sudalaimuthu, learned counsel on record for writ petitioner is before this virtual Court. Mr.A.Baskaran, learned Government Advocate (Civil Side) accepts notice on behalf of the lone respondent.

2. This Court is informed by both sides without any disputation or disagreement that a similar writ petition with regard to the same writ petitioner/assessee pertaining to another assessment year i.e., 2012-2013 (to be noted, captioned writ petition pertains to 2013-2014) was dismissed by Hon'ble predecessor judge on 29.07.2019 leaving it open to the writ petitioner to pursue alternate remedy. There is also no disputation that a deposit has been made in this case also at the time of admission. This order reads as follows:

> '*The petitioner assails an order dated 12.08.2014 passed under the provisions of the Tamil Nadu Value Added Tax Act, (in short 'Act').*
>
> *2. Learned counsel appearing for the petitioner*

stresses the position that the order has been passed in gross violation of the principles of natural justice and no opportunity has been granted prior to finalization of the same.

3. However, I find that the Officer has afforded sufficient opportunity prior to finanlization of the proceedings. In fact, paragraph Nos. 3 and 4 of the impugned order clearly established the position. The same is extracted hereunder:

> *3) Tvl.Vertex Phamaceuticals are directed to give their objections if any to the above proposal within a stipulated time vide this office Notices in the reference 3rd, 5th and 14th cited. But, citing the proprietor's husband's health they requested further period of 30 days through their authorised person in the reference 4th cited. To follow the principles of Natural Justice, time is also granted and restricted to further period of 15 days. But, instead of giving valid reply for the above proposal, again citing proprietor's husband's health, they requested further period of 30 days vide reference 6th cited. Accordingly, time has been given for 15 days vide reference 7th cited. Again, vide their letter 8th cited they have requested time for personal hearing. Accordingly, time has been given for personal hearing vide reference 9th and 10th cited. In the letter submitted by proprietor's husband on 16.07.2014, they again claimed further period of inordinate time of 2 months to reply. To follow the principle of natural justice, it is informed to proprietor's husband that time has been given for further period of 15 days (ie on or before 31.07.2014).*
>
> *4) Based on the above circumstances, in the final notice for personal hearing dated 21.07.2014, as already mentioned in the above paragraph, further period of 15 days has been given to file their objections if any to the undersigned (ie on or before 31.07.2014). It is also mentioned that they may file in writing with documents to substantiate that within above period and has been given the opportunity of being heard in person within above said period. That notice has been refused to received by the people of Tvl.Vertex Pharmaceuticals continuously for 3 days. The Registered post*

containing the above notices has not been received and the same has been returned to this office on 01.08.2014 with remarks of ''door locked not claimed''. Tabular form of the communication mentioned in para 3 and 4 above may be represented as follows:

Sl. No.	Notice dated	Time given	Dealer's claim and date	Dealer's Explanation
1	05.02.2014	15 days	No reply	Nil
2	30.05.2014	7 days	Reply dt.05.06.2014. Claim further period of 1 month	Citing husband's health
3	Reply on 5.6.2014 to representative	15 days	...	...
4	12.06.2014 for the period October 2013 to Feb 2014	15 days	Reply dated 19.06.2014 claim further period of 1 month	Citing husband's health
			Reply dated 19.06.2014. claim further period of 1 month	Citing husband's health
5	20.06.2014	15 days	Reply dated 24.06.2014 claim personal hearing	Citing death of Tvl.Vertex Phamaceuticals official death
6	Phone to Proprietor for personal hearing on 3.7.2013	3 days	No reply	No reply

7	11.07.2014	7 days time for personal hearing	Rely dated 16.07.2014 submitted by husband claim 2 months	Citing manager's death
8.	Reply on 16.07.2014 to husband	15 days	Accepted by proprietor's husband	Nil
9	21.07.2014(three separate notices for the year 2013-2014 including notice for the month of March 2014). Refused to receive by Tvl.Vertex Pharmaceuticals (despatched through special messenger) and Registered post has been returned	Personal hearing opportunity has been given on or before 31.07.2014 and 15 days time has been given for the month of October 2013 to March 2014	Reply dated 30.07.2014. Partially accepted the sales suppression.	Accepted to pay suppresse d output tax within 1 month.

5)For these reasons, it is presumed that they wilfully drag on the above proposal to avoid legal consequences formulated in the TNVAT Act, 2006. It is also noticed that business transactions from their concern from the same place have been done for the past 6 months.

4. In the light of the above, I am not inclined to accept the submissions of learned counsel on this score.

5. By order dated 29.10.2014 conditional stay was granted by this Court to the petitioner to deposit 25% of the disputed demand of tax amount. Learned counsel states that the same has been complied with.

6. In the aforesaid circumstances, the petitioner is permitted to file an appeal before the statutory authorities and the amount deposited into court shall serve as the statutory pre-deposit. If appeal is filed within a period of two weeks from the date of receipt of a copy of this order, the same shall be entertained *by the Appellate Assistant Commissioner, heard and dispose on merits and in accordance with law.*

7. This writ petition is dismissed with the abovesaid terms. No costs. Consequently, connected miscellaneous petition is closed.'

3. Therefore, captioned writ petition is also disposed of by way of a similar order and the operative portions to state with specificity are paragraphs 5, 6 and 7. Consequently, connected M.P.(MD)No.1 of 2014 is disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Assistant Commissioner (CT),
Palakkarai – II Assessment Circle,
Trichy.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-34167[F] dated 11/11/2021)

W.P(MD) No.17312 of 2014
and M.P.(MD)No.1 of 2014
10.11.2021

PK(CO)
RS/PM (23.11.2021) 5P 3C