IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. Nos.1729 & 1731 of 2022
and
W.M.P.Nos.1880 & 1882 of 2022

Tvl.Compuage Infocom Ltd.,
Represented by its Authorised Signatory,
Mr.P.Balamurugan,
No.87, GNT Road, Anna Auxillium Warehouse,
Ponniammanmedu Madhavaram,
Chennai – 600 110. ...Petitioner in both WPs

-vs-

State Tax Officer,
Royapettah Assessment Circle,
Room No.206, 2nd Floor,
Integrated Commercial Taxes and Registration
Department Building, Nandanam,
Chennai – 600 035. ...Respondent in both WPs

PRAYER in W.P.No.1729 of 2022 : Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to impugned notice dated 12.01.2022 issued in TIN:33490581628/2012-13 by the respondent and quash the same and further, direct the respondent to pass appropriate order after providing an opportunity of personal hearing to the petitioner.

PRAYER in W.P.No.1731 of 2022 : Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records pertaining to impugned order dated 27.08.2021 issued in TIN:33490581628/2012-13 issued by the respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam
in both WPs

For Respondent : Mr.N.R.R.Arun Natarajan
in both WPs Special Government Pleader

ORDER

The prayer sought for in W.P.No.1729 of 2022 is for a Writ of Certiorarified Mandamus to call for the records pertaining to impugned notice dated 12.01.2022 issued in TIN:33490581628/2012-13 by the respondent and quash the same and further, direct the respondent to pass appropriate order after providing an opportunity of personal hearing to the petitioner.

2.The petitioner is a registered dealer under the erstwhile Tamil Nadu Value Added Tax Act, 2006 [in short 'TNVAT Act']. In respect of the year 2012-13 though the assessment has been completed as a deemed assessment under Section 22(2) of the said TNVAT Act, subsequently proceedings have been issued by the respondent/revenue stating that in so far as the availment of input tax credit in respect of a sale transaction, there was no voucher, i.e. the original voucher produced by the petitioner/assessee and without even the original voucher, since it cannot be claimed by the petitioner with regard to the said sale transaction for claiming Input Tax Credit [ITC], the respondent/revenue issued a notice, following which an order of assessment has been passed under Section 27 of the TNVAT Act on 27.08.2021 under which tax due with penalty was directed to be paid.

3.Subsequent to the said order, the petitioner in fact claimed to have traced the original voucher in question and according to the petitioner, the petitioner was able to trace the original voucher. Thereafter, the petitioner had submitted an application under Section 84 of the TNVAT Act on 29.10.2021 stating that the petitioner since has traced the original invoice bearing No.12587, dated 30.06.2012, the same is readily available. Therefore, it is evident that the petitioner has availed Input Tax Credit correctly and is not liable to reverse the ITC and hence, the petitioner is not liable to pay any penalty. Therefore, the petitioner in the said application requested the Revenue to give a personal hearing enabling the petitioner to produce the original invoice and after accepting the same, the order passed on 27.08.2021 can be reversed and accordingly, the ITC claimed by the petitioner can be confirmed.

4.In respect of the said application submitted by the petitioner under Section 84 of the TNVAT Act, the same according to the petitioner has not been considered in a proper perspective which is evidenced in the order which is impugned herein dated 12.01.2022 issued by the respondent with a heading 'Notice', wherein they have simply stated that the petitioner seeking revision of assessment under Section 84 of the TNVAT Act presuming that they have produced the invoice before the undersigned.

5.However, it is the case of the petitioner that, the petitioner has traced the invoice and therefore, in that context only, application under Section 84 of the TNVAT Act for rectification since was made, the same should have been considered. However, in the impugned order dated 12.01.2022, of course being a cryptic order, irrelevant aspect has been stated by the respondent as if the petitioner has presumed that they have produced the said invoice before the revenue. Therefore, the said communication, which is impugned herein is under challenge. Accordingly, Mr.G.Derrick Sam, the learned counsel for the petitioner seeks indulgence of this Court against such impugned order and to issue a consequential direction by remanding the matter to the respondent to decide the application under Section 84 of the TNVAT Act of the petitioner on merits.

6.Heard, Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for the respondent, who would submit that, after having considered the application under Section 84, the impugned order has been passed. Therefore, it cannot be stated that the application under Section 84 had not been considered and is kept pending till date.

7.He would also submit that, the original invoice if at all had been available with the petitioner that should have been produced well before the order passed i.e., at the time of the original return filed. Therefore, since it is an after thought based on which now application under Section 84 of the TNVAT Act has been filed as if there are no error apparently on the record that should be rectified whether the fact remain that there has been no error apparently on the face of the record. Therefore, the question of any rectification as claimed by the petitioner in his application under Section 84 does not arise. Accordingly, the learned Special Government Pleader submits that the impugned order can very well be sustained.

8.I have heard the rival submissions made by the learned counsel for the parties and perused the materials placed before this Court.

9.As has been rightly pointed out by the learned counsel appearing for the petitioner, it is the case of the petitioner that the original invoice has been traced out only subsequently with a number and date and the same since has been readily available with the petitioner, an opportunity was sought for by way of personal hearing, for which application under Section 84 of the TNVAT Act has been made. When such an application has been made under Section 84, which can be made at any point of time or at any stage of the assessment either before the original assessing authority or the appellate authority or even the revisional authority, and if any such application under Section 84 is filed, the same shall be decided as to whether any rectification sought for by the assessee is to be made or not and accordingly, the order on merits shall be passed by disposing of the application under Section 84 of the TNVAT Act.

10.Here in the case on hand, on the said application under Section 84 of the TNVAT Act, now an order has been passed with a heading 'Notice' dated 12.01.2022, of course by a cryptic order, wherein the following has been stated :-

> "The dealer in their letter have stated that they are now in possession of the said invoice and seeking revision of assessment under section 84 of the TNVAT Act, presuming that they have produced the said invoice before the undersigned.
>
> In absence of Original Invoice the dealers request not deserves for consideration."

11.On reading of the these reasons stated by the respondent in the impugned communication, it can easily found out that the respondent has not in fact considered the application of the petitioner under Section 84 of the TNVAT Act in a proper perspective and what has been stated and asked for or requested by the petitioner has not been considered by the respondent and they have given a different reason as if the petitioner has presumed that they had already filed the original invoice before the undersigned, i.e. the Officer who passes the impugned communication.

12.Contrary to that, the petitioner has not claimed that the original invoice has already been produced before the Revenue. What is stated by the petitioner is that, the petitioner has traced the original invoice and it is readily available with them to produce the same. When that being so, the order impugned by stating the aforestated reason is absolutely unacceptable, because, this order has been passed out of total non-application of mind on the part of the respondent. Therefore, this Court has no hesitation to hold that the impugned order does not survive under the legal scrutiny.

13.In that view of the matter, this Court is inclined to dispose of the writ petition with the following order:

> "That the impugned order is quashed and the matter is remitted back to the respondent for re-consideration. By considering the same, application filed under Section 84 of the TNVAT Act, for rectification, dated 29.10.2021 by the petitioner shall be considered by giving an opportunity of personal hearing to the petitioner and in this regard, date of personal hearing can be intimated by the revenue to the petitioner at the earliest and on the date to be mentioned or

fixed by the revenue, the petitioner/assessee without fail shall appear and produce the original invoice and if any other input to be supplied in support of the same and thereafter, an order has to be passed.”

14.In so far as the prayer sought for in W.P.No.1731 of 2022 is concerned, since the original assessment order dated 27.08.2021 has been challenged in this writ petition, in view of the aforestated order passed in W.P.No.1729 of 2022 where the impugned order has been quashed with a direction to decide the application under Section 84 of the TNVAT Act for rectification and once such application is decided by the respondent, it is needless to mention that depending upon the outcome of the decision to be made by the Revenue in the said application under Section 84 of the TNVAT Act, the further fate of the order dated 27.08.2021 could be decided as to whether the same has to be sustained or to be reversed. Till such time, the order dated 27.08.2021 which is impugned in W.P.No.1731 of 2022 shall be kept in abeyance.

15.With these orders and directions, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

cse

To

State Tax Officer,
Royapettah Assessment Circle,
Room No.206, 2nd Floor,
Integrated Commercial Taxes and Registration
Department Building, Nandanam,
Chennai – 600 035.

+1cc to Mr.Hari Radhakrishnan, Advocate SR. No. 8699
+1cc to Special Government Pleader (Taxes) SR. No.8378

W.P.Nos.1729 & 1731 of 2022

MT (CO)
PR (15/03/2022)