IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2022

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.NO.2884 OF 2022
AND
W.M.P.NOS.3008 & 3010 OF 2022

Yum Restaurant India Private Limited,
Represented by its Director - Tax
Mr.Dharmender Gupta
No.12th, 14th, 15th Floor, Towder D
Global Business Park,
Gurgaon - 122 002.

... Petitioner

Vs

1. The Deputy Commercial Tax Officer,
   Pattanur Check Post,
   Villupuram District - 605 006.

2. The State Tax Officer,
   Office of the Deputy Commissioner (ST) Intelligence,
   Integrated Master Plan Complex,
   Villupuram - 605 602.

... Respondents

Prayer :

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the files of the 1st respondent herein in his O.R.No.149/309/2012-13/G.D.No.109/2012-13 dated 04.09.2015 and quash the same with the direction to redo the revision proceedings dated 04.09.2015 considering the objections dated 29.08.2015.

For Petitioner : Mr.R.Kumar

For Respondents : Mr.Richardson Wilson
Additional Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent herein in his O.R.No.149/3099/2012-13/G.D.No.109/2012-13 dated 04.09.2015 and quash the same with the direction to redo the revision proceedings dated 04.09.2015 considering the objections dated 29.08.2015.

2. The goods like Electrical Panel carried by the conveyance belongs to the petitioner was intercepted by the Revenue on 31.08.2012, where, they claimed to have found that, certain documents which are to be carried by the conveyance were not available. Pursuant to which, the vehicle was detained. As against the detention order, the petitioner filed a writ petition before this Court in W.P.No.31649 of 2012, where, the learned Judge passed an order on 26.11.2012 with the following direction:

> "6.In such view of the matter, on payment of the disputed tax as contemplated in the notice i.e., Rs.1,82,150/-, the authorities are directed to release the goods forthwith. In so far as composition fee is concerned, the authorities will proceed in accordance with the provisions of Section 72 of the TNVAT Act. The petitioner is at liberty to challenge the same by way of revision as provided under the Act. The amount demanded under composition fee shall not be made as a pre-condition for release of the goods."

3. In pursuance of the said order passed by this Court, the petitioner paid the disputed tax, against which, the vehicle in question belongs to the petitioner had been released.

4. Subsequently, a second adjudication notice was issued by the Revenue on 19.07.2015, where, they seek show cause from the petitioner within seven days. On receipt of the said notice, the petitioner had sent a reply on 29.08.2015 which had been served on the Revenue on 07.09.2015, for which, the postal acknowledgment also received by the petitioner from the respondent has been produced.

5. Therefore, the fact remains that, in response to the notice dated 19.07.2015, the petitioner had given reply on 29.08.2015.

6. Thereafter, it is the definite case of the petitioner that, nothing has come from the Revenue for several years and now only i.e., sometime in November 2021, the notice has been

issued to pay the compounding fee of Rs.3,64,300/-, where, it has been referred that, an order dated 04.09.2015 was passed.

7. Only thereafter, the petitioner sought for the copy of the said order, as according to the petitioner, the said order dated 04.09.2015 fixing the compounding fee under Section 72(1)(a) was not served on him and thereafter, on receipt of the copy of the said order i.e., dated 04.09.2015, the petitioner challenging the same filed this writ petition.

8. Heard Mr.R.Kumar, learned counsel appearing for the petitioner, who would submit that, as per the order passed by this Court in the earlier round of litigation, entire tax demanded by the petitioner was paid, only pursuant to which, the vehicle was released by the Revenue and thereafter, notice was issued on 19.07.2015 which was promptly responded by the petitioner on 29.08.2015 and the same having been received, acknowledged by the respondent on 07.09.2015, despite the said fact, without giving any opportunity and without considering the said reply given by the petitioner, the present order seems to have been passed on 04.09.2015 and the said order also has been not served on the petitioner and in the order dated 04.09.2015, nothing has been stated about the reply given by the petitioner to the second notice for adjudication and therefore, on that ground, since it is violation of principles of natural justice, the order impugned shall not stand, hence, he seeks indulgence of this Court.

9. Per contra, Mr.Richardson Wilson, learned Additional Government Pleader appearing for the respondents would submit that, notice had been given on 19.07.2015, for which, reply had been given by the petitioner on 29.08.2015, the same, having been considered only, the present order i.e., order dated 04.09.2015 was passed and after six years, the petitioner now has chosen to file this writ petition challenging the said order.

10. In this context, the learned Additional Government Pleader appearing for the respondents also pointed out that, in the order impugned, it has been specifically stated that, the notice dated 19.07.2015 i.e., Ref. No.4 as well as the dealers letter dated 05.08.2015 i.e., Ref.No.5 had been considered as those references have been mentioned in the impugned notice, hence, it can very well be construed that, the reply given by the petitioner having been taken note of only the present order dated 04.09.2015 was passed, hence, there was absolutely no violation on the part of the Revenue with regard to the said provision or the principles of natural justice and hence, on that ground, that too belatedly after six years, the petitioner cannot challenge the impugned order, hence, the writ petition is liable to be rejected, he contended.

11. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

12. After the order was passed by this Court in the earlier round of litigation, where, direction was given to the petitioner to pay the disputed tax, the tax was paid, accordingly the vehicle in question was released, thereafter, the learned Judge has made it clear that, insofar as composition fee is concerned, the authorities will proceed in accordance with law with the provisions of Section 72 of the TNVAT Act.

13. In order to proceed with regard to the composition fee, the Adjudication Authority i.e., the Revenue issued the second adjudication notice dated 19.07.2015. Having receipt of the same, the petitioner replied for the same by reply letter dated 29.08.2015 and the same was received by the respondent.

14. However, what is the content of the reply given by the petitioner in his reply has not been considered as nothing has been stated about the same in the order impugned except to have a reference of the notice to the petitioner dated 19.07.2015. Therefore, this Court has no hesitation to hold that, the reply given by the petitioner has not been considered in proper perspective, without which, since the order was passed confirming the proposal already made with regard to the composition fee by the order impugned and the copy of the same also since has not been served, as claimed by the petitioner, the said order in the legal scrutiny may not stand and therefore, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the impugned order is set aside and the matter is remitted back to the respondents for reconsideration. While reconsidering the same, the respondents shall give an opportunity of personal hearing to the petitioner by fixing a date at the earliest by sending a proper notice in this regard and on receipt of such notice on the date to be fixed for personal hearing, the petitioner shall, without any default, appear before the respondents and produce the necessary supporting documents with reply to substantiate his case. Thereafter, on consideration of those input to be supplied by the petitioner by way of reply etc., the final order shall be passed by the respondents. It is made clear that, in view of the peculiar facts and circumstances of this case, the opportunity of personal hearing is given to the petitioner and it shall not be treated as a precedent in similar cases.

15. With these observations, this Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Deputy Commercial Tax Officer,
   Pattanur Check Post,
   Villupuram District - 605 006.

2. The Deputy Commissioner (ST) Intelligence,
   The State Tax Officer,
   Integrated Master Plan Complex,
   Villupuram - 605 602.

+1cc to Mr.R.Kumar, Advocate, S.R.No.10526
+1cc to the Government Pleader(Taxes), S.R.No.11249

W.P.No.2884 of 2022

MT(CO)
PM/15/03/2022