IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WRIT PETITION NO.5055 OF 2022
AND
W.M.P.NO.5170 OF 2022

Tvl.Vishnu Enterprises
Rep.by Proprietor Rajesh Mittal
First Floor, Old No.136, New No.76
Kodambakkam High Road
Nungambakkam, Chennai-600 034. ...Petitioner

Vs

The Assistant Commissioner [CT]
Broadway assessment circle
Vepery, Chennai 600 003. ...Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondent in his Proceedings in TIN No.33140040997/ 2014 - 15 dated 29.10.2021 and quash the same as illegal.

For Petitioner : Mr.D.Vijayakumar

For Respondents : Mr.Richardson Wilson
Additional Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records of the respondent in his Proceedings in TIN No.33140040997/ 2014 - 15 dated 29.10.2021 and quash the same as illegal.

2. With regard to the assessment year 2014-15, according to the Revenue, there has been an interstate sale and therefore the input tax credit availed by the petitioner/dealer is liable to be reversed under Section 19(2)(v) and 19(5)(c) of the TNVAT Act, 2006 and therefore in this regard, a show cause notice was issued. According to the Revenue, the said show cause notice has not been responded by the assessee dealer and therefore, based on the available records, the Revenue proceeded to pass

orders on 29.10.2021 invoking the said provisions and the input tax credit availed by the petitioner being interstate sales, has been reversed. Challenging the said order, the present writ petition has been filed.

3. Mr.D.Vijayakumar, learned counsel appearing for the petitioner submitted that, pursuant to the show cause notice, a reply has been given by the petitioner on 08.11.2017, where the petitioner has stated the following,

> "In this connection, we submit to say that the specific commodity of TMT bars bearing the brand name of Tvl.JSW Steel Limited alone is supported by us to the interstate buyers with or without C Forms. The concern branded company has no TMT Manufacturing plant in Tamil Nadu and thereby the entire connected purchases are effected from Tvl.JSW Steel Limited, Toranagallu in Karnataka State. It is only this specific commodity involved in the interstate transaction. Hence, it is clear that it is purely an interstate purchase. Therefore, we submit that there is no attraction of ITC under Section 19[5][c] and 19[2][v] and request to drop the proposal."

4. Thereafter also, a further request has been made by the petitioner to give some more time to produce the relevant records. Be that as it may. Insofar as the reply given by the petitioner as stated supra is concerned, that should have been taken into account. However, in the impugned order the Revenue has stated that the show cause notice has been given on 31.08.2021 and that has not been replied by the petitioner assessee and therefore on that ground they proceeded to pass the assessment order by reversing the input tax credit. Hence, the impugned order is liable to be interfered with, the learned counsel for the petitioner contended.

5. Per contra, Mr.Richardson Wilson, learned Additional Government Pleader appearing for the respondent would submit that, whatever reply said to have been made by the petitioner as claimed by the learned counsel for the petitioner dated 08.11.2017, whether has been submitted or not is not known. However, when a fresh notice was issued on 31.08.2021 through RPAD, having receipt of the same, the petitioner has not given any proper reply. Instead, he has only given a reply stating that, he needs some more time to file his objections. Therefore, admittedly since there has been no objections filed on behalf of the assessee, the question of challenging the assessment order on the ground that there has been violation of principles of natural justice does not arise in this case, he contended.

6. I have considered the rival submissions made by the learned counsel for either side and have perused the materials placed on record.

7. The subsequent notice issued on 31.08.2021 was responded to by a communication dated 28.09.2021 by the petitioner stating that, he needs some more time to file further objections. However, prior to that, pursuant to the earlier show cause notice, the petitioner had already given a reply on 08.11.2017, wherein he has stated that, the only transaction which is involved does not fall under interstate purchase and therefore it does not attract input tax credit under Section 19(2)(v) and 19(5)(c) of the TNVAT Act, 2006, therefore, the proposal made in this regard through the show cause notice should be dropped.

8. However, whether this reply given by the petitioner has been considered or not has not been mentioned in the impugned order. Therefore, on that ground, this Court feels that, the matter can be remitted back to the respondent for reconsideration.

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

- That the impugned order dated 29.10.2021 is set aside and the matter is remitted back to the respondent for reconsideration.
- While reconsidering the same, one more opportunity shall be given to the petitioner to put forth his case by fixing a date.
- On that date, the petitioner shall appear for personal hearing and whatever defence or input to be supplied by the petitioner can be made and,
- Considering the same, a final order can be passed by the respondent in accordance with law.

10. With the above observations and directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

KST

To

The Assistant Commissioner (CT)
Broadway assessment circle
Vepery, Chennai 600 003.

+1cc to Mr.D.Vijayakumar, Advocate Sr.No.14858

+1cc to the Special Government Pleader Sr.No.15582

W.P.No.5055 of 2022

NK(CO)
RVM(16/03/2022)