IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.5458 of 2022
and
W.M.P.Nos.5551, 5554 & 5555 of 2022

M/s.Salem Steel Suppliers,
Represented by its Partner,
Mr.Suresh K Jain,
12/1, Mooker Nallmuthu Street,
Parrys, Chennai – 600 001. ...Petitioner

Vs.

The Assistant Commissioner (ST),
Broadway Assessment Circle,
No.32, Room No.304, Integrated Commercial
Taxes Complex,
Elephant Gate Bridge Road,
Vepery, Chennai – 600 003. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN:33700360304/2014-2015 dated 29.10.2021 and the consequential Notice issued in TIN & CST No.33700360304/2014-2015 dated 25.02.2022 and quash both the impugned proceedings as passed without considering the objections dated 24.03.2021 and 05.10.2021 filed by the petitioner and so passed contrary to the provisions of the TNVAT Act and also in violation of the principles of natural justice and direct the respondent to pass a fresh assessment order after considering the objections filed by the petitioner and the letter dated 03.12.2021.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.Richardson Wilson
Additional Government Pleader

O R D E R

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent in TIN:33700360304/2014-2015 dated 29.10.2021 and the consequential Notice issued in TIN & CST No.33700360304/2014-2015 dated 25.02.2022 and quash both the impugned proceedings as passed without considering the objections dated 24.03.2021 and 05.10.2021 filed by the petitioner and contrary to the provisions of the Tamil Nadu Value Added Tax Act and also in violation of the principles of natural justice and to direct the respondent to pass a fresh assessment order, after considering the objections filed by the petitioner and the letter dated 03.12.2021.

2. The case of the petitioner is that the petitioner is a dealer in Cold Rolled Stain Steel sheets and coils, iron and steel products such as bearings etc., and was a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'the Act'). While so, the respondent has issued a show cause notice on 17.02.2021 in respect of the reversal of Input Tax Credit (ITC) under Section 19(5)(C) of the Act calling upon the petitioner to give objections, if any, immediately. Hence, the petitioner made objections on 24.03.2021. Again a notice was issued on 01.10.2021, for which also, the petitioner made objections on 05.10.2021. However, without considering the replies/objections, the present impugned order dated 29.10.2021 has been passed as if the petitioner has not filed any reply to the show cause notices. In fact, the respondent has not referred the second notice and two objections filed by the petitioner. Challenging the same, the present Writ Petition is filed.

3. The learned counsel for the petitioner submits that though the petitioner has made his objections on two occasions i.e., on 24.03.2021 and 05.10.2021, the same were not considered by the respondent while passing the impugned order. Hence, he requested this Court that the matter may be remitted back to the authority and permit the petitioner to file the copy of the objections already filed by him.

4. On the above contentions, this Court heard the learned Additional Government Pleader appearing for the respondents, who submitted that the respondents have carefully considered the case of the petitioner on the basis of the materials and, therefore, no interference with the order passed by the respondents.

5. The facts in the present case are not in dispute. The reversal of the Input Tax Credit u/s 19(5)(C) of the Act resulted in the filing of the objections by the petitioner. Thereafter, further to the notice issued on 1.10.2021, the petitioner has submitted his objections on 5.10.2021, whereinafter the impugned order has been passed.

6. It is the specific case of the petitioner that the impugned order travels on the premise that the petitioner has not submitted any reply/objections to the notice issued by the respondent, when, in fact, the petitioner, immediately on receipt of the notice dated 1.10.2021, even on 5.10.2021, submitted his objections. This clearly shows that the respondents have not only applied their mind to the materials while passing the impugned order, but the said materials have not been considered and the petitioner has also not been afforded with an opportunity to put forth his case before passing the impugned order. Therefore, the impugned order suffers from clear violation of principles of natural justice and, therefore, the same necessitates a remand to the respondents for consideration and passing orders in adherence of principles of natural justice.

7. It is to be pointed out that the order passed by the respondents reveal that there is no mention of the replies submitted by the petitioner to the notice issued by the respondents. However, the fact remains that the petitioner has submitted his replies, which have been acknowledged by the respondents. That being the case, the respondents are bound to consider the replies submitted by the petitioner and after affording an opportunity of hearing to the petitioner, pass orders and infraction of the above procedure is a clear violation of principles of natural justice. In the case on hand, neither the replies filed by the petitioner has been taken note of nor the petitioner has been afforded an opportunity of hearing before passing of the impugned order and in the above scenario, the order passed by the respondents suffers the vice of illegality and is arbitrary and the same deserves to be set aside on the ground of violation of principles of natural justice.

8. Accordingly, the impugned orders passed by the respondents are set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is permitted to file a copy of the objections dated 24.3.2021 and 5.10.2021 along with a copy of this order before the respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondent is directed to consider the same and pass appropriate orders within a period of twelve weeks thereafter after providing an opportunity of hearing to the petitioner. The petitioner is further directed to co-operate with the respondent enabling the respondent to pass appropriate orders within the time frame stipulated above.

9. This writ petition is allowed with the aforesaid directions. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

sp/vsi2

To

The Assistant Commissioner (ST),
Broadway Assessment Circle,
No.32, Room No.304, Integrated Commercial
Taxes Complex,
Elephant Gate Bridge Road,
Vepery, Chennai – 600 003.

+1cc to Mr.P.Rajkumar, Advocate SR. No.16168
+1cc to Special Government Pleader (Taxes) SR. No.16356

W.P.No.5458 of 2022

BR (CO)
PR (31/03/2022)