IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WRIT PETITION NO.6563 OF 2022
AND
W.M.P.NOS.6670, 6671 & 6675 OF 2022

M/s.Bhandari Foils and Tubes Ltd.,
Represented by its Authorized Signatory
Mr.Gireesh Bhandari

... 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 under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN:33800060907/2014-2015 dated 29.10.2021 and the consequential notice issued in TIN & CST No.33800060907/2014-2015 dated 02.03.2022 and quash both the impugned proceedings as passed without considering the objections dated 25.03.2021 and 06.10.2021 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 letter dated 03.12.2021.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.R.Siddharth,
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN:33800060907/2014-2015 dated 29.10.2021 and the consequential notice issued in TIN & CST No.33800060907/2014-2015 dated 02.03.2022 and quash both the impugned proceedings as passed without considering the objections dated 25.03.2021 and 06.10.2021 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 letter dated 03.12.2021.

2. The petitioner is a dealer under the erstwhile TNVAT Act, 2006 (In short 'the Act'). With regard to the assessment order 2014-15, notice was issued to the petitioner dealer by the Revenue on 17.02.2021 proposing to reverse the ITC. In response to the same, the petitioner have given a reply dated 25.03.2021 which reads as follows:

> “With reference to the above, we hereby inform you that no Input Tax Credit claimed on the purchases of goods with regard to sales made in the course of Interstate trade Rs.83,15,486/- (Interstate Sales @ 5%) during the year 2014-15.
>
> We would like to inform you that our total Inter-state sales for the year 2014-15 was only Rs.83,15,486/- and we have not claimed any ITC on the above sales as the goods was purchased against Branch Transfer. We hereby enclose copies of F-Form (Branch Transfer), Invoice copy and Stock register for your reference and record purposes.
>
> Hence, the proposed demand amount of Rs.3,84,013/- is invalid and request you to send us the re-assessment notice after verifying the enclosed documents.”

3. The said reply has been received or acknowledged by the respondent as the postal acknowledgment dated 25.03.2021 has been filed before this Court.

4. However, unmindful of the earlier notice and reply, once again, the Revenue issued notice on 01.10.2021 on the same line of proposal which was also replied by a further reply dated 06.10.2021 by the petitioner and that also has been received by the respondent. However, on 29.10.2021, without referring to the reply given by the petitioner twice to the notice given by the

Revenue to the petitioner twice, the final assessment orders reversing the input tax credit, has been issued which is impugned herein.

5. Heard Mr.P.Rajkumar, learned counsel for the petitioner who pointed out the aforesaid and seeks the indulgence of this Court to issue direction.

6. Heard Mr.R.Siddharth, learned Government Advocate appearing for the respondent.

7. Though two times notices have been given and both times the petitioner dealer has given reply, where he has raised points that he has not claimed any input tax credit for the interstate sale for which Form A was also submitted, without taking into account those replies and the same not even have been referred in the impugned order since the Revenue has passed an order which is impugned herein, there can be no doubt that order has been passed without considering the reply given by the petitioner. Therefore on the ground, the impugned order is liable to be set aside and the matter can be remanded back to the respondent.

8. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following order.

> "That the impugned order is set aside and the matter is remanded back to the respondent and the respondent while reconsidering the same, the reply already given by the petitioner two times shall be considered, if at all any further reply is to be received from the petitioner that can also be received and accordingly an order considering the same, can be passed by the respondent within a reasonable time."

9. With these observations, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

KST/ANU

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, S.R.No.19363

+1cc to the Special Government Pleader(Taxes), S.R.No.20028

W.P.No.6563 of 2022

PA(CO)
RLP(01/04/2022)