IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 12-04-2022

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.9056 of 2022
and
W.M.P.Nos.8853, 8854 and 8855 of 2022

Tvl. Success Pharma Vaccine
Represented by its Managing Partner
A.Kasiraman,
No.12, Thilagar Street,
R.S.Puram,
Coimbatore - 641 002. ... Petitioner

-vs-

The Assistant Commissioner (ST)
R.S.Puram West Assessment Circle,
Commercial Taxes Building,
Dr.Balasundaram Road,
Coimbatore. ... Respondent

Prayer : Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in its impugned proceedings made in TIN : 33901942652/2016-17, dated 30.05.2019 quash the same as illegal and arbitrary and direct the respondent to re-do the assessment in accordance with law by considering the objections, dated 13.11.2018 filed by the petitioner.

For Petitioner : Mr.J.Prasanna Kumar

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

O R D E R

The prayer sought for herein in this writ petition is for a writ of Certiorarified Mandamus calling for the records on the file of the respondent in its impugned proceedings made in TIN : 33901942652/2016-17, dated 30.05.2019 quash the same as illegal and arbitrary and direct the respondent to re-do the assessment in accordance with law by considering the objections, dated 13.11.2018 filed by the petitioner.

2. The petitioner is a dealer under the erstwhile Tamil Nadu Value Added Tax Act. 2006 (in short "the TNVAT Act"). For the Assessment Year 2016-17, the petitioner has claimed ITC based on four supplies from four supply dealers.

3. However, when the same was scrutinised by AG Audit, it was noticed that, the petitioner claimed ITC wrongly and therefore, in order to reverse the same, notice was issued on 22.10.2018.

4. In response to the same, the petitioner had given reply on 13.11.2018 along with documents, which has been received and acknowledged by the Revenue and the proof for such receipt and acknowledgement also have been filed in the typed set of documents.

5. Despite these factors, the order of assessment, dated 30.05.2019 was passed reversing the ITC and thereby there is a demand of Rs.4,56,351/- and this order passed on 30.05.2019 is under challenge in this writ petition.

6. When a question was posed as to why on the same ground, this order has not been challenged immediately before this Court, the learned counsel for the petitioner submitted that, after receipt of this order, further communication had been sent, sending the reply with documents once again requesting that, the Revenue should consider the reply already given by the petitioner, as it has not been mentioned in the order impugned that, they have received the reply and considered it.

7. On the other hand, Mr.C.Harsha Raj, learned Additional Government Pleader appearing for the respondent Revenue would point out that, if at all this is the reason for challenging the order of assessment, dated 30.05.2019, the same could have been done immediately either before the Appellate Authority or before this Court, now after three years, since this writ petition has been filed, for the reasons of latches, it may be rejected, he contended.

8. I have considered the said submissions made by both sides and have perused the materials placed before this Court.

9. Though after three years only this writ petition has been filed challenging the impugned order, dated 30.05.2019, having regard to the reason stated by the petitioner and also the fact which remains that, despite the reply having been given, the same was not considered by the respondent and they have stated that no reply has been filed, this Court is satisfied that this writ petition can be entertained at this stage.

10. On the side of the factual matrix, this Court found that, the reply, dated 13.11.2018 along with documents had been received by the Revenue, for which acknowledgement also has been filed before this Court.

11. When that being the position, the reason stated in the impugned order, that the dealer not filed any reply or objection is incorrect, therefore, there is a violation of principles of natural justice. Hence, on that ground this impugned order can be successfully assailed by the petitioner.

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

(i) The impugned order is set aside and the matter is remitted back to the respondent for reconsideration.

(ii) While reconsidering the same, the reply given by the petitioner, dated 13.11.2018 along with the annexures or documents can be considered and after giving an opportunity of personal hearing to the petitioner, revised order can be passed by the Revenue on merits.

(iii) Since the Bank account of the petitioner is attached, the reassessment order as directed above shall be completed and final order shall be passed within a period of four weeks from the date of receipt of a copy of this order.

(iv) It is made clear that, depending upon the outcome of the decision to be made as directed above, the further course of action with regard to the attachment of bank account of the petitioner can be taken and communicated to the petitioner.

13. With these direction, this writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

tsvn

To

The Assistant Commissioner (ST)
R.S.Puram West Assessment Circle,
Commercial Taxes Building,
Dr.Balasundaram Road,
Coimbatore.

+1cc to Mr.J.Prasanna Kumar, Advocate, S.R.No.25226

+1cc to the Special Government Pleader (Taxes), S.R.No.25823

W.P.No.9056 of 2022

GMR(CO)
SU(13/05/2022)