IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.9718 & 9719 of 2019 &
W.M.P.No.10314 of 2019

Flowserve India Controls (Pvt) Ltd.
Rep. by its Finance-Controller,
Nagbhushan Rao,
S.F.Nos.136/3 & 137
Myleripalayam Post,Othakkalmandapam
Coimbatore-641 032 ...Petitioner in both WPs

Vs.

The Assistant Commissioner (ST)
Avinashi Road Assessment Circle,
Coimbatore ...Respondent in both WPs

Prayer in WP.No.9718 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the files of the respondent-herein in TIN No.33591781657/2016-17 dated 20.02.2019, and quash the same.

Prayer in WP.No.9719 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent-herein in N.K.No.369/2018/A1 dated 20.03.2019, quash the same while directing the respondent herein to rectify the assessment in TIN NO.33591781657/2016-17 dated 20.02.2019 and cancel the tax and interest demands as prayed by the petitioner in its application dated 15.03.2019.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.Richardson Wilson
Additional Government Pleader

O R D E R

The challenge in W.P.No.9718 of 2019 is to order of assessment dated 20.02.2019 passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') and in W.P.No.9719 of 2019 to order of rectification under Section 84 of the Act dated 20.03.2019.

2. The petitioner assails the former order on the ground of there being no effective hearing granted to him prior to passing of the order. Admittedly, two notices were received from the respondent. In response to the second notice dated 12.11.2018, the petitioner states at paragraph 4 of the affidavit filed in support of the writ petition, that it had prepared a response and had appeared before the Assessing Authority.

3. The date on which the petitioner appeared is unclear as there is no record of such appearance. However, the petitioner would aver that the response was not accepted and the petitioner was orally informed that notice would be issued afresh, particularly, since the assessment for the period 2014-15 was also pending before the authority. In the counter filed by the respondent, this submission is denied.

4. Post completion of the assessment, the petitioner has appeared with an objection before the assessing authority which has come to be rejected in Section 84 order to the effect that the objection has itself been received post completion of assessment and that the petitioner had failed to avail the benefit of hearing granted to it, prior to completion of the assessment.

5. A perusal of the notice dated 12.11.2018 reveals that the officer has called for objections to be filed within 15 days from the date of receipt of the notice. That apart, and admittedly, no notice has been issued calling for the appearance of the petitioner prior to completion of the assessment. If it is the respondents' case that objections were not filed in time, it was still incumbent upon the respondent to have heard the petitioner, even in the absence of objections.

6. For these reasons, the impugned orders are set aside. The respondent will issue notice afresh to the petitioner, hear it, consider the replies and supporting document, if any, filed, and pass orders of assessment de novo within a period of 12 weeks from today, in accordance with law.

7. These writ petitions are disposed as above. Connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

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To

The Assistant Commissioner (ST)
Avinashi Road Assessment Circle,
Coimbatore.

+1cc to Mr.N.Prasad, Advocate Sr.No.33775

+1cc to the Special Government Pleader (Taxes) Sr.No.34146

W.P.No.9718 & 9719 of 2019 and
W.M.P.No.10314 of 2019

SMI(CO)
RVM(22/06/2022)