IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19467 of 2021
and
W.M.P.No.20761 of 2021
[Video Conferencing]

Tvl.Sha Steel Traders,
Represented by its Proprietor,
Mr.Kotharsha,
217, Angappa Naicken Street,
Chennai 600 001 ....Petitioner

-Vs.-

The Assistant Commissioner (ST)
Muthialpel Assessment Circle,
Commercial Taxes Office Complex,
Elephant Gate Bridge Road,
Chennai 600 003. .....Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent in order dated 28.06.2021 in TIN/33201242115/2014-15 and quash the same.

For Petitioner : Mr.Adithya Reddy
For Respondents : Mr.Richardson Wilson
Additional Government Pleader

ORDER

The petitioner has challenged the impugned order dated 28.06.2021. The impugned order precedes two notices dated 15.09.2020 and 12.03.2021. The former was served on the petitioner while the latter notice remained unserved, as the notice sent to the petitioner was returned with the postal endorsement “no such addressee” both at the place of business, additional place of business and at the residential address of the partner of the petitioner firm.

2.It is the specific case that the impugned order has been passed without issuing a proper show cause notice under Section 27 of the TNVAT Act, 2006. The learned counsel for the petitioner submits that the notice dated 15.09.2020 and 12.03.2021 only called upon the petitioner to furnish certain documents and even if there was a failure on the part of the petitioner to furnish those documents, it was expected on the part of the respondent to issue a show cause notice before passing the impugned order. It is submitted that the re-assessment proceedings under Section 27 of the Act cannot be speed tracked by overlooking the mandatory requirement of issuance of a show notice.

3.Opposing the prayer, the learned Additional Government Pleader for the respondent submits that the notice dated 15.09.2020 was served. However, the petitioner failed to respond to the same. It is submitted that the subsequent notice dated 12.03.2021 remained unserved and therefore, left with no other option the respondent proceeded to pass the impugned order. It is submitted that there are records to substantiate that there was a substantial compliance of requirements of Rule 19 of the TNVAT Rules, 2007.

4.Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and perused the impugned order.

5.Though the respondent has not filed counter, what is evident from the reading of the records before this Court is that only the notices dated 15.09.2020 and 12.03.2021 were issued by the respondent and the notice dated 15.09.2020 alone was served on the petitioner which merely called upon the petitioner to furnish certain records for verification as to whether the petitioner had validly availed credit of Input Taxes. Even if the petitioner had not responded to the same, the respondent ought to have issued a notice to show cause as to why the Input Tax Credit availed during 2014-15 should not be reversed in the absence of proper records to substantiate the same in accordance with the provisions of the TNVAT Act, 2006 r/w TNVAT Rules, 2007.

6.Since the order has been passed bypassing the mandatory requirements of issuance of notice to show case as to why the credit availed should not be reversed and the amount should not be demanded from the petitioner, the impugned order has to be quashed.

7.Under these circumstances, the impugned order dated 28.06.2021 is quashed and the case is remitted back to the respondent to pass a speaking order within a period of 45 days from the date of receipt of a copy of this order. The impugned order dated 28.06.2021 which stands quashed by this Order shall be treated as a show cause notice issued to the petitioner for the purpose of Section 27 of TNVAT Act, 2006. The petitioner may reply to the aforesaid show cause notice [Order which stood quashed] within a period of 15 days from the date of receipt of a copy of this order. The respondent shall pass orders after giving an opportunity of personal hearing to the petitioner either in person or through video conferencing and the first date of hearing is fixed on 01.02.2022.

8.The Writ Petition is disposed of with the above observations. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

pgp

To

The Assistant Commissioner (ST)
Muthialpel Assessment Circle,
Commercial Taxes Office Complex,
Elephant Gate Bridge Road,
Chennai 600 003.

+1cc to Mr.Adithya Reddy, Advocate SR.No.95
+1cc to the Special Government Pleader (Taxes)SR.No.860

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SPD(CO)
GN(21/01/2022)