IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.Nos.33629 & 33151 of 2022
and
W.M.P.No.32555 of 2022
in
W.P.No.33151 of 2022

M/s.Viki Industries Pvt. Ltd.,
(Represented by its Executive - Finance
Medarametla Penchal Naidu)
No.1, Krishna Street
Nungambakkam, Chennai-600 034. .. Petitioner in both WPs

Vs.

The Assistant Commissioner (ST)
Valluvarkottam Assessment Circle
4th Floor, 'Palaniappan Maaligai'
No.10, Greams Road,
Chennai-600 035. .. Respondent in both WPs

Writ petition No.33629 of 2022 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in TIN : 33940702291/2015-16 dated 04.03.2022, quash the same.

Writ petition No.33151 of 2022 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent herein in 04.11.2022 and quash the same while directing the respondent to forbear from proceeding with the recovery pending disposal of the application dated 16.11.2022 as reiterated on 19.11.2022.

For Petitioner in both WP	:	Mr.N.Prasad
For Respondent in both WP	:	Mr.T.N.C.Kaushik Additional Government Pleader (Taxes)

*****

COMMON ORDER

This common order will now govern the captioned two writ petitions and captioned 'Writ Miscellaneous Petition' ['WMP'].

2. Mr.N.Prasad, learned counsel on record for writ petitioner and Mr.T.N.C.Kaushik, learned Additional Government Pleader (Taxes) for the lone respondent are before this Court.

3. Captioned main writ petitions were taken up for disposal with the consent of both sides owing to the narrow compass of the matter and the acute angle on which the pivotal point for consideration turns.

4. Short facts shorn of granular particulars are that the petitioner was a registered dealer under the 'the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of brevity, convenience and clarity]; that there was deemed assessment over a period of time; that the writ petitioner dealer is a private limited company incorporated in India; that the writ petitioner is a manufacturer of TMT bars and billets; that the respondent issued a notice dated 05.02.2018 alleging short reporting resulting in purported short levy relatable to difference in sales turnover and sale of assets; that this pertains to 'assessment year 2015-16' ['said AY' for the sake of convenience]; that the writ petitioner dealer responded to this notice vide a reply dated 07.03.2018 *inter alia* contending that TNVAT has in fact been paid on vehicles sold in Tamil Nadu and that the same has been duly reported; that in this reply, the writ petitioner has given as many as three tabulations which according to the writ petitioner contains the relevant data in response to 05.02.2018 notice from the respondent; that the respondent proceeded to make an 'order dated 04.03.2022 bearing reference TIN : 33940702291/2015-16' [hereinafter 'impugned assessment order' for the

sake of brevity, convenience and clarity]; that the impugned assessment order does not mention the provision under which it has been made but learned Revenue counsel, on instructions, submits that it has been made under Section 27 of TNVAT Act; that this impugned assessment order is under challenge in one of the captioned matters i.e., W.P.No.33629 of 2022; that thereafter, the respondent has issued a notice claiming arrears of tax to be paid within two days; that this 04.11.2022 notice is based on impugned assessment order; that this 04.11.2022 notice has been assailed in the other captioned writ petition namely, W.P.No.33151 of 2022; that in W.P.No.33151 of 2022, when the matter was listed in the Admission Board, this Court formulated two questions and made proceedings dated 09.12.2022 (the same will be reproduced infra); that the challenge to the impugned assessment order if decided would impact the impugned notice as one is sequitur of the other i.e., demand notice is sequitur of the assessment order.

5. Though very many averments have been made in the writ affidavit, learned counsel on record for writ petitioner focused his

submission on one point and that one point is, in the impugned assessment order, there is no mention about the writ petitioner's aforementioned reply dated 07.03.2018. In this regard, a reference to Section 27 of TNVAT Act is of relevance. Section 27 of TNVAT Act vide proviso to sub-section (2) makes it clear that the dealer should be given a reasonable opportunity to show cause against such order before the same is made. This expression 'reasonable opportunity to show cause against such order' was explained by this Court in ***State Bank of India officers*** case law, ***[State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner, Chennai-1 in W.P.No.22634 of 2019 order dated 01.08.2019]*** making it clear that this may not entail a personal hearing, personal hearing is at the discretion of Assessing Officer and a contradistinction qua a revision under Section 22(4) of erstwhile TNVAT Act was also made. It may not be necessary to delve into facts as that is not the thrust of the argument but for the purpose of completion of facts it is necessary to say that this ***State Bank of India officers Association*** case order of this Court was carried in appeal by the dealer vide W.A.No.4073 of 2019 and Hon'ble Division Bench vide order dated 16.12.2019 dismissed the writ appeal confirming the 01.08.2019 order of this Court.

6. Learned Revenue counsel, on instructions, submits that the reply dated 07.03.2018 sent by the writ petitioner does not correlate with 05.02.2018 notice and it pertains to issues which are not germane to the show cause notice.

7. This Court refrains itself from expressing any opinion or view on this submission as it is statutorily imperative for the respondent to give a reasonable opportunity to the dealer before the impugned assessment order was made. Though a show cause notice was issued, there is nothing that is articulated in the impugned assessment order to show that the reply was considered. As there is no mention about the reply, this Court is of the considered view that the statutorily imperative requirement does not stand satisfied in the case on hand qua impugned assessment order and that calls for interference.

8. As alluded to supra for the sake of convenience, 09.12.2022

proceedings made in W.P.No.33151 of 2022 and WMP thereat is extracted and reproduced so that the two formulated questions are readily available i.e., for ease of reference. 09.11.2022 proceedings is as follows:

> *'After some arguments, Mr.N.Prasad, learned counsel who is before this Court along with Mr.K.A.Parthasarathy requested for a short accommodation to place some case laws before this Court.*
>
> *2. Atleast two questions for which case laws may have to be placed before this Court are as follows:-*
>
> > *(a) Whether Section 84 of 'the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of brevity] is available to an Assessee or as to whether it is a provision available to the Assigning Officer owing to the plane language of the Statute?*
> >
> > *(b) Whether issues such as mismatch between the financials and returns short payment of tax would qualify as 'error apparent on the face of the record' within the meaning of Section 84 of the TNVAT Act captioned* ***'84. Power to rectify any error apparent on the face of the record.-'****.*
>
> *3. List in the Admission Board on Monday i.e., list on 12.12.2022.'*

9. To be noted, the aforementioned two questions are left open in this order and the same is articulated in the operative portion infra.

10. In the light of the narrative thus far, discussion and dispositive reasoning, the following order is made:

(a) Impugned assessment order is set aside solely on the ground that there is nothing in the impugned assessment order to show that the writ petitioner's reply dated 07.03.2018 (reply to 05.02.2018 show cause notice) has been considered whereas it is statutorily imperative to give the dealer a reasonable opportunity to show cause;

(b) The respondent is directed to consider the reply dated 07.03.2018 given by the dealer and make an assessment order afresh;

(c) Though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the matter and all questions are left open for the respondent to consider while doing Section 27 best judgment assessment drill *de novo*;

(d) Questions formulated vide 09.12.2022 proceedings in W.P.No.33151 of 2022 are left open for being decided in another matter where a legal tussle and a finding becomes imperative for deciding the matter;

(e) As regards reasonable opportunity, ***State Bank of India officers*** case law, ***[State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commisioner, Chennai-1 in W.P.No.22634 of 2019 order dated 01.08.2019]*** confirmed by Hon'ble Division Bench would operate;

(f) Best Judgment revision drill which has to be done afresh after considering the reply of writ petitioner dated 07.03.2018 shall be communicated to the writ petitioner under due acknowledgment in the usual mode within five working days from the date on which the order is made;

(g) Impugned demand notice dated 04.11.2022 is set aside for the self-same reasons qua setting aside of the impugned assessment order;

11. Captioned main Writ Petitions are disposed of in the aforesaid manner with the aforesaid directives. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

15.12.2022
(2/2)

Index: Yes/No
Speaking / Non-speaking order

mk

To
The Assistant Commissioner (ST) (FAC)
Perur Circle
Coimbatore - 641 018.

M.SUNDAR, J.,

mk

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