IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.No.53 of 2023
and
W.M.P.No.37 of 2023
in
W.P.No.53 of 2023

M/s.Novastar Communications (P) Ltd.,
Represented by its Director
Mrs.C.H.Lakshmi Prasanna
New No.13, Old No.31, Thomas Nagar
Little Mount, Saidapet
Chennai-600 015. .. Petitioner

Vs.

The State Tax Officer
Kotturpuram Assessment Circle
No.245, Integrated Commercial Taxes Building
Nandanam, Saidapet, Chennai-600 028. .. Respondent

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent in TIN/33980863580/2015-16 dated 30.09.2022 and quash the impugned order dated 30.09.2022 as passed contrary to the procedures contemplated under the provisions of the TNVAT Act, 2006 and CST Act, 1956 and also in violation of the principles of natural justice and to further direct the respondent to consider the objections dated 6.1.2020 and the objections dated 8.7.2021 and the documents filed along with the objections by the petitioner and pass a fresh assessment order in accordance with law after granting reasonable opportunity to the petitioner.

For Petitioner	:	Mr.P.Rajkumar
For Respondent	:	Mr.V.Prashanth Kiran Government Advocate (Taxes)

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ORDER

This order will now dispose of the captioned writ petition and captioned 'Writ Miscellaneous Petition' ['WMP'] thereat.

2. Mr.P.Rajkumar, learned counsel on record for writ petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (Taxes) who accepted notice on behalf of lone respondent are before this writ Court.

3. Captioned main writ petition has been filed assailing an 'order dated 30.09.2022 bearing reference TIN/33980863580/2015-16' [hereinafter 'impugned order' for the sake of convenience and clarity]

made by the lone respondent.

4. Owing to the short point on which the captioned matter is predicated, main writ petition was taken up with the consent of learned counsel on both sides.

5. Factual matrix in a nut shell is that the writ petitioner is a dealer under the erstwhile 'the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of convenience and clarity]; that the writ petitioner's line of business activity pertains to set-top boxes and its accessories; that the writ petitioner was filing monthly returns and there was a deemed assessment under Section 22(2) of TNVAT Act; that the respondent sent a notice dated 23.12.2019 alleging that the writ petitioner had reported turn over that is lesser than the actual turn over; that vide this communication, the writ petitioner was called upon to file their objections together with connected records and it was mentioned that it is open to the writ petitioner to appear in person and put forth explanations / objections on any working day in the office

of lone respondent within a time frame of 15 days; that the writ petitioner responded to this pre-revisional notice by way of a reply dated 06.01.2020 *inter alia* pointing out that Form WW has already been provided and other requisite documents have been submitted along with summary of sales and purchases; that there was a lull thereafter; that the respondent issued another pre-revisional notice on the same lines and second pre-revisional notice is dated 27.04.2021; that the writ petitioner responded to the second pre-revisional notice in and by a communication dated 08.07.2021; that thereafter, the impugned order came to be made determining taxable turn over of the writ petitioner i.e., making a revised assessment order; that in the impugned order, it has been mentioned that the writ petitioner has not filed any objections and has not availed personal hearing; that the writ petitioner has now filed the captioned writ petition assailing the impugned order.

6. Notwithstanding very many averments and contentions in the writ affidavit, learned counsel for writ petitioner posited and predicated his argument on one point and that one point is, the impugned order

proceeds on the basis that the writ petitioner has neither replied to pre-revisional notices nor availed opportunity of personal hearing whereas the obtaining factual position is different. Learned counsel drew the attention of this writ Court to writ petitioner's replies dated 06.01.2020 and 08.07.2021 to the first and second pre-revisional notices respectively being pre-revisional notices dated 23.12.2019 and 27.04.2021. Learned counsel also submitted that the first reply dated 06.01.2020 was submitted in person and the acknowledgment would demonstrate that it was submitted in person, second reply dated 08.07.2021 was sent through registered post and therefore, it would be incorrect to say that the writ petitioner has not availed personal hearing.

7. Learned Revenue counsel submits that it may have been submitted in person and through registered post but that does not by itself demonstrate that personal hearing has been availed by the writ petitioner. It may not be necessary to go into this controversy or contestation as the impugned order proceeds on the basis that the writ petitioner has neither sent a reply nor availed personal hearing. It is

obviously incorrect to say that the writ petitioner has not responded to pre-revisional notices.

8. Therefore, without expressing any view or opinion on the merits of the matter and the contestations, the following order is made.

(a) The impugned order is set aside solely on the ground that it proceeds on the basis that the writ petitioner has not responded to pre-revisional notices whereas the writ petitioner has responded to both pre-revisional notices;

(b) The respondent shall now re-do the reassessment legal drill by taking into account the aforementioned replies of the writ petitioner dated 06.01.2020 and 08.07.2021 respectively;

(c) By consent, personal hearing is fixed on 20.01.2023 Friday at 3.00 p.m. and venue shall be the office of lone respondent i.e., No.245, Integrated Commercial Taxes Building, Nandanam, Chennai-600035;

Captioned Writ Petition and WMP are disposed of in the aforesaid manner with the aforementioned directives. There shall be no order as to costs.

04.01.2023

Index: Yes/No
Speaking / Non-speaking order
Neutral Citation : Yes / No

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To

The State Tax Officer
Kotturpuram Assessment Circle
No.245, Integrated Commercial Taxes Building
Nandanam, Saidapet, Chennai-600 028.

M.SUNDAR, J.,

mk

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<u>and</u>
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