IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.19784 of 2023
and
W.M.P.No.19086 of 2023

Mahindra and Mahindra Limited,
Rep by Shri R K Sairam,
Manager Finance and Accounts (AD),
Mahindra Towers, 1st Floor,
No.17/18, Patullos Road, Chennai – 600 002. ... Petitioner

Vs.

The Deputy Commissioner (ST)-II,
Large Tax Payers Units,
Integrated Commercial Taxes and Registration Department,
South Tower, 4th Floor,
Nandanam, Chennai – 600 035. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the Revision Order TIN:33510640011/2007-08 dated 2704.2023 passed by the respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.C.Harsharaj
Additional Government Pleader

ORDER

Mr.C.Harsharaj, learned Additional Government Pleader takes notice on behalf of the respondent.

2. This is the third round of writ petition in respect of the Assessment Year 2007-2008. The petitioner had earlier suffered an Assessment Order on 25.03.2011. Under these circumstances, the petitioner had filed an application under Section 84 of the TNVAT Act, 2006 on 31.03.2011 and also simultaneously filed a writ petition in W.P.No.10546 of 2011. The writ petition was disposed by this Court vide its order dated 26.04.2011 by directing the respondent to dispose of the petitioner's application filed under Section 84 of the TNVAT Act, 2006 on 31.03.2011. However, it appears that nothing further progressed. Meanwhile, the respondent had proceeded to pass a Revision Order under Section 27 of the TNVAT Act from 31.03.2015. According to the petitioner, the said Revision Order was without issued any notice to the petitioner and therefore in violation of principles of natural justice. Under these circumstances, the petitioner was constrained to

approach this Court for the second time in W.P.No.14652 of 2015. After hearing the petitioner and the learned counsel for the respondent, the said writ petition was disposed by this Court vide its order dated 16.06.2015. Relevant portion of the order dated 16.06.2015 of this Court in W.P.No.14652 of 2015 reads as under:

> *"7.The learned Additional Government Pleader (T) is unable to support the impugned order. The reason is that when the petitioner's application filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 seeking certain rectification on three reasons has not been considered, he has come to this Court by filing writ petition no.10546/2011 and this Court also directed the respondent to pass appropriate order on the pending application dated 31.03.2011, while so, the first respondent without issuing any notice and without giving any reasonable opportunity has passed the impugned exparte order. Therefore, the same is set aside and the matter is remanded back to the first respondent to pass a speaking order after giving personal hearing to the petitioner.*
>
> *8.Accordingly, the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is also closed."*

3.After the order was passed by this Court on 16.06.2015, the respondent has issued a notice on 07.10.2015. The petitioner had also replied on 27.10.2015. Thereafter, another notice was issued on 10.03.2023 which has now culminated in the Revision Order purportedly in compliance of the order passed by this Court on 16.06.2015 in W.P.No.14652 of 2015.

4.The impugned order has been challenged by the petitioner on the ground that it is a non-speaking order.

5.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and also perused the impugned order. The impugned order merely reproduces the lengthy reply of the petitioner dated 27.10.2015. The only discussion in the impugned order reads as follows:

> <u>Personal Hearing on 24.03.2023:</u>
>
> The representative of the dealer has appeared on 24.03.2023 before the proper officer and submitted their contention as same as the above mentioned narrations.
>
> <u>Final findings of the Assessing Officer:</u>
>
> a)The dealers have filed the revised annual return dated 16/11/2010, after about 19 months from the end of FY 2007-2008 with reduction in turnover by Rs.8,44,23,429/-
>
> b)Filing of revised returns were enabled under TNVAT Act, 2006 as per G.O.Ms.No.62 CT & R Department dated 06/05/2010 within a period of 6 months from the last day of the relevant period to which the return relates to.

c)In the case on hand, the revised returns have been filed clearly after the permissible time limits that too, 6 months after the notification was issued.

d)In fine, the claims being preferred after the permissible time limits and thereby barred by limitation, the request for refund of tax paid in excess is not feasible for consideration as per the provisions of TNVAT Act, 2006 and hence, rejected.

4.In fine, the following revision of assessment for the year 2007-08 based on further verification of the replies furnished by the dealers under Section 84 of the TNVAT Act, 2006 as under:

		Turnover	***Rate***	***Tax Due***
4% sales	Rs	2426102822	4%	97044113
12.5% sales	Rs	4828440290	12.50%	603555036
	Rs	7254543112		700599149
Less:Sales Return	Rs	221458096		8997638
Net sales as per the return	Rs	7033085016		691601511
Add works contract turnover reported in Form-I	Rs	5180814	4%	207233
	Rs	7038265830		691808744
Supplementary return-19.05.2008	Rs	946168	12.50%	118271
Supplementary return filed on 27.08.2009	Rs	3089801	4%	123592
Total	Rs	7042301799		692050607

Tax Due	Rs	-	692050607
ITC claimed	Rs	1085286	-
Entry Tax adjustment	Rs	682559393	-
Tax Paid	Rs	7318579	690963258
Balance	Rs	-	1087349

6.The impugned order has been passed after awaiting for a long period after order dated 16.06.2015 was passed in W.P.No.14652 of 2015 on 16.06.2015 the impugned order has been passed is without following the principles of natural justice. Therefore, the impugned order is unsustainable. The impugned order is therefore liable to be quashed and it is accordingly quashed. The case is remitted back to the respondent to pass a speaking order on merits in accordance with law within a period of eight (8) weeks from the date of receipt of a copy of this order.

7.Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation:Yes/No

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To

The Deputy Commissioner (ST)-II,
Large Tax Payers Units,
Integrated Commercial Taxes and Registration Department,
South Tower, 4th Floor,
Nandanam, Chennai – 600 035.

C.SARAVANAN, J.

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