IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21343 of 2022
and
W.M.P.Nos.20341 & 20343 of 2022

HBL Power Systems Limited,
(Represented by its Branch Manager
S.Ramajayam),
TCR Niveraas Plaza, 4th Floor,
A,205/325, Poonamallee High Road,
Aminjikkarai,
Chennai – 600 029. .. Petitioner

Vs.

The Assistant Commissioner (ST),
Ayanavaram Assessment Circle,
F-50, Anna Nagar East,
Chennai – 600 102. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the respondent herein in TIN/33761346664/2015-16 dated 30.06.2022 and quash the same.

For Petitioner : Mr.K.A.Parthasarathy

For Respondent : Mrs.K.Vasanthamala
Government Advocate

O R D E R

The petitioner is aggrieved by the impugned order dated 30.06.2022 passed by the respondent for the assessment year 2015-2016. By the impugned order, the respondent has determined a sum of Rs.71,26,907.00 as tax due from the petitioner and has imposed penalty of Rs.1,06,90,360.00 under Section 27 (3) (C) of the TNVAT Act, 2006. Operative portion of the impugned order reads as follows:

> "A notice was issued to the dealer on 16.06.2022 and requested to file the written objections if any to the above notices, within 7 days from the receipt of the notice, failing which order will be passed as proposed. On receipt of the notice, the dealer did not file any credible records. It is obviously known that no vital records to file. If failure to file the objections and it is confirm the proposal for the year 2015-16 under TNVAT Act 2006 as detailed below.

Total turnover determined	Rs.5,78,77,613.00
Total taxable determined	Rs.5,78,77,613.00 @ 14.5%
Total Tax due	Rs.71,26,907.00
Total paid	Rs. NIL
Balance	Rs.71,26,907.00

> A notice inform 'O' is issued
>
> Penalty due under section 27 (3) (C) of the TNVAT Act 2006. It is wilful and non-disclosed the turnover and tax not paid in the monthly returns and attract penalty on the tax due at 150%.

Penalty due	Rs.1,06,90,360.00
Penalty paid	Rs. NIL
Balance	Rs.1,06,90,360.00

A notice inform 'RR' is issued.

Assistant Commissioner (ST),
Ayanavaram Assessment Circle."

2.The specific case of the petitioner is that the petitioner is a registered dealer in Tamil Nadu and is engaged in sale of batteries manufactured at the petitioner's factory from the State of Andhra Pradesh and Telangana State. It is submitted that the respondent had entertained a doubt that the petitioner had imported the goods for a sum of Rs.5,26,16,012/- during the period in dispute and effected local sale and not paid appropriate tax.

3.The petitioner was therefore, issued with a show cause notice dated 28.06.2017, to which the petitioner had replied on 24.07.2017, stating that the petitioner does not import any goods for trading purpose. It was further stated that the inputs and consumables are imported not only from Chennai Port, but also from other Ports in the country for the petitioner factories located in the Telangana State and State of Andhra Pradesh and that only manufactured batteries were sold by the petitioner in Tamil Nadu and therefore, there was no basis to confirm the demand proposed for the show cause notice dated 28.06.2017.

4.It is submitted that the impugned demand was not sustainable. However, after receiving reply dated 24.07.2017 and 24.08.2017 of the petitioner, the respondent has issued second show cause notice dated 14.12.2020, to which again the petitioner has replied on 12.01.2021. Despite the same, the respondent has proceeded to pass the impugned order. In the impugned order, reference was made to a notice dated 16.06.2022, which however was not received by the petitioner.

5.It is submitted that without furnishing the particulars, the respondent have confirmed the demand. It is submitted that the impugned order also suffers from violations of principles of natural justice, as the petitioner was not heard before the impugned order was passed.

6.Defending the impugned order, the learned counsel for the respondent has drawn attention to few passages from the affidavit filed in support of this Writ Petition, stating that the petitioner has admitted the case of the respondent in the show cause notices. Specific reference was made particularly to paragraph No.3 of the impugned order.

7.That apart, it is submitted that it was incumbent on the part of the petitioner to produce the Form 'F' to substantiate stock transfer and since the petitioner failed to give a satisfactory reply, the respondent confirmed the demand.

8.By way of rejoinder, the learned counsel for the petitioner would submit that question of filing Form 'F' would arise only if the goods were received by the petitioner in the place of business in Tamil Nadu. It is submitted that imported goods were never received by the petitioner but were transported directly to factory in State of Telangana and State of Andhra Pradesh after imported goods were cleared.

9.In any event, it is submitted that the impugned order has been passed without considering the reply filed by the petitioner and without affording opportunity of being heard.

10.I have considered the arguments advanced by the learned counsel for the petitioner, I have also perused the affidavit filed by the petitioner.

11.There is no admission by the petitioner in the affidavit filed in support of the present Writ Petition. Notice dated 16.06.2022 has not served on the petitioner before the impugned order dated 30.06.2022 was passed. The date 16.06.2022 in the impugned order appears to be CAG Audit defects, as is evident from the reference in the preamble to the impugned order. Copy of the said CAG Defect Memo dated 16.06.2022 of CAG Audit team also appears to have not been served to the petitioner before the impugned order was passed on 30.06.2022.

12.Therefore, the impugned order is not sustainable. It has to therefore go in the manner in which it has been passed. Consequently, the impugned order is set aside and the case is remitted back to the respondent to pass an appropriate order within 75 days from the date of receipt of a copy of this order. The respondent shall furnish the details of the alleged import which is said to have been made by the petitioner for a sum of Rs.5,26,16,012/- based on which the demand has been confirmed by re-determining the taxable returns together with copy of CAG Defect Memo dated 16.06.2022 of CAG Audit team within 30 days from the date of receipt of a copy of this order. The petitioner shall respond to the same within 30 days thereafter.

13.Entire exercise shall be carried out by the respondent as expeditiously as possible, preferably within a period of 75 days from the date of receipt of a copy of this order. Needless to state that before passing such order, the petitioner shall be heard.

14.With the above observations, the Writ Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

05.07.2023

krk
Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Assistant Commissioner (ST),
Ayanavaram Assessment Circle,
F-50, Anna Nagar East,
Chennai – 600 102.

C.SARAVANAN, J.

krk

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