IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.316 of 2022
and
W.M.P.Nos.350 and 351 of 2022

M/s.Global Impex,
Represented by its Partner V.Janarthana Guptha ... Petitioner

Vs.

The Assistant Commissioner (ST),
Namakkal (Town) Assessment Circle,
Namakkal. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in his proceedings TIN : 33863122582/2012-2013 dated 03.11.2021 and quash the same as illegal.

For Petitioner : Mr.M.Hariharan

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The petitioner is before this Court against the Impugned Assessment Order dated 03.11.2021 passed for the Assessment Year 2012-2013.

2. At the time of filing of this writ petition, the petitioner had stated that the Impugned Assessment Order dated 03.11.2021 has been passed without issuing a proper Show Cause Notice and without giving an opportunity to the petitioner to file objection under Section 27 of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006.

3. However, during the course of hearing, it is submitted that the petitioner was earlier issued with the notice dated 13.08.2019 and the Best of Judgment Final & Reminder Notice dated 23.04.2021.

4. These notices were served to the address where the petitioner was carrying on the business. It is the case of the petitioner that the petitioner has closed down the business in the year 2014 and an intimation was sent to the respondent by Letter dated 03.09.2014.

5. Learned counsel for the petitioner would draw attention to the copy of the Letter dated 03.09.2014 requesting the respondent to cancel the registration and copy of the extract from the delivery note to state that the aforesaid Letter was acknowledged by the respondent.

6. It is further submitted that on 17.09.2013, the Assistant Commissioner (ST), Namakkal namely the respondent herein had also certified that there was no dues by the petitioner for the Assessment Year 2012-2013 and that the Impugned Assessment Order dated 03.11.2021 seeking to recover tax for the Assessment Year 2012-2013 was therefore without merits and barred by limitation.

7. On the other hand, the learned Government Advocate for the respondent would submit that the writ petition is devoid of merits. It is further submitted that even if the petitioner *ipso facto* closed down the business in the year 2014, there are no records to show that the petitioner had indeed closed down the business in the year 2014-2015.

8. That apart, the learned Government Advocate for the respondent would submit that the procedure required as per Rule 19 of the Tamil Value Added Tax (TNVAT) Rules, 2007 has been complied and therefore no fault cannot be found that the manner in which the assessment was completed. It is submitted that the petitioner has an alternate remedy by filing an appeal before the Deputy Appellate Commissioner in accordance with Section 51 of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 and therefore the writ petition should be dismissed.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

10. I am of the view, the petitioner deserves a fresh opportunity to file objection and to show cause against the Impugned Assessment Order dated 03.11.2021.

11. In this case, admittedly, the petitioner is no longer in the business as otherwise, the Department would have received returns from the petitioner for the succeeding period as well. There are no intimations that the petitioner has

filed returns for the succeeding period. Be that as it may, since the petitioner is also guilty of not intimating the respondent about the change of address and closure of business properly and the registration of the petitioner was also not struck off from the register maintained by the respondent, to balance the interest of the petitioner and the respondent, the Impugned Assessment Order is set aside and the matter is remitted back to the respondent to pass a fresh order on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order subject to the petitioner depositing 10% of the disputed tax as confirmed by the Impugned Assessment Order as the petitioner has no longer in the business.

12. The Impugned Assessment Order which stands quashed shall be treated as addendum to the the notice dated 13.08.2019 and the Best of Judgment Final & Reminder Notice dated 23.04.2021 issued to the petitioner, which preceded the Impugned Assessment Order.

13. The petitioner shall file a reply and make deposit of 10% of the disputed tax within a period of four weeks from today.

14. It is made clear that in case the petitioner fails to comply with any of the conditions as stated above, it shall be deemed that the writ petition was dismissed without any further reference to limitation.

15. This Writ Petition is disposed of with the above observations and directions. No costs. Connected Writ Miscellaneous Petitions are closed.

12.09.2024

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

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To

The Assistant Commissioner (ST),
Namakkal (Town) Assessment Circle,
Namakkal.

C.SARAVANAN, J.

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