IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2024

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10249 of 2022
and W.M.P.Nos.9967 & 9969 of 2022

M/s.VA TECH WABAG LTD
Rep. by its General Manager Commercial (M/56)
No.17, Wabag House,
200 Feet, Thoraipakkam Pallavaram Main Road,
Sunnambu Kolathur,
Chennai – 600 117.

...Petitioner

Versus

1.The Assistant Commissioner (ST)
Madipakkam Assessment Circle, Zone – VIII,
Chennai – 600 035.

2.The Superintendent of CGST & Central Excise,
Sholinganallur Outer Range,
Pallavaram Division,
No.6, Sridevi Temple Towers,
Sembakkam, Chennai – 600 073.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records of the 1st respondent in the impugned order GSTIN/33AABCV0225G1ZW/2017-18 dated 09.11.2021, quash the same as it has been passed without jurisdiction by the 1st respondent, without following the procedure prescribed under Rule 142(1) of the CGST/TNGST Rules, 2017.

For Petitioner	:	Ms.Radhika Chandra Sekhar
For Respondent – 1	:	Mr.C.Harsharaj, Additional Government Pleader
For Respondent – 2	:	Mr.A.P.Srinivas, Senior Standing Counsel

ORDER

In this writ petition, the petitioner has challenged the order dated 09.11.2021 passed by the 1st respondent.

2. The impugned order was preceded by the Show Cause Notice dated 04.12.2020 issued by the 1st respondent.

3. The learned counsel for the petitioner submitted that the show cause notice dated 04.12.2020 was not uploaded in the GSTN portal and the same was said to have been transmitted to the petitioner through post during March 2020 when the country was under lockdown due to the outbreak of Covid-19 Pandemic. Hence, the petitioner was unable to reply to the said

show cause notice. After the issuance of show cause notice, the 2nd respondent had sent a communication dated 15.02.2021 to the petitioner through e-mail, for which, the petitioner had sent its reply vide e-mail dated 16.02.2021.

3.1. The learned counsel for the petitioner further submitted that the petitioner was assessed by the Central Authorities, whereas, the show cause notice dated 04.12.2020 was issued by the State Authority viz., 1st respondent herein.

3.2. The learned counsel for the petitioner also submitted that in the present case, the entire proceedings initiated by the 1st respondent from the date of issuance of show cause notice on 04.12.2020 till the culmination of impugned order on 09.11.2021, is without jurisdiction. In support of his submission, the learned counsel has placed reliance on the decision rendered by this Court in the case of ***Tvl.Vardhan Infrastructure Vs. Special Secretary, Head of the GST Council Secretariat*** reported in ***(2024) 160 taxmann.com 771 (Madras)***.

4. On the other hand, the learned Additional Government Pleader appearing for the 1st respondent submitted that after the impugned order was passed, the petitioner vide Letter dated 15.11.2021, merely requested the 1st respondent to recall the impugned order. The impugned order was passed on 09.11.2021, but, the petitioner has filed the present writ petition only on 18.04.2022 long after the period of limitation prescribed for filing appeal under Section 107 of the respective GST Enactments. There is no clear explanation from the side of the petitioner as to why the petitioner did not approach this Court immediately after the impugned order was passed.

4.1. The learned Additional Government Pleader prayed that the petitioner may be directed to pay 25% of the disputed tax. He also submitted that the decision rendered by this Court in the case of ***Tvl.Vardhan Infrastructure Vs. Special Secretary, Head of the GST Council Secretariat*** reported in ***(2024) 160 taxmann.com 771 (Madras)*** has been stayed by the Division Bench of this Court.

5. I have considered the arguments advanced by the learned counsel on either side and I have perused the materials available on record.

6. As far as this case is concerned, show cause notice was issued on 04.12.2020 and impugned order was passed on 09.11.2021. Aggrieved over the impugned order, petitioner has filed the present writ petition on 18.04.2022. After the passing of impugned order and before the filing of writ petition, petitioner vide Letter dated 15.11.2021, requested the 1st respondent to recall the impugned order presumably under Section 161 of the respective GST Enactments on the ground that there was error apparent on the face of record in the impugned order.

7. It is to be noted that the show cause notice was not uploaded in the GSTN portal and the same was served to the petitioner through post.

8. Considering the overall facts and circumstances of the case and having regard to the submissions made by the learned counsel for both sides, this Court is inclined to quash the impugned order and remit the case back to the 1st respondent subject to the condition that the petitioner shall deposit 15% of the disputed tax, within a period of two months from the date of receipt of a copy of this order. Thereafter, the 1st respondent shall

pass fresh orders, on merits and in accordance with law, after affording a reasonable opportunity of hearing to the petitioner, as expeditiously as possible. Liberty is granted to the petitioner to canvass all the issues before the 1st respondent.

9. With the above observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

06.12.2024

mrr

Index : Yes/No

To

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C.SARAVANAN, J.

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