IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15341 of 2022
and
W.M.P.No.14500 of 2022

M/s.Phoenix Medical Systems Pvt Ltd,
Represented by its Chief Financial Officer,
D.Nandagopal
DP 42, SIDCO Industrial Estate,
Thirumudivakkam,
Chennai – 600 132. ... Petitioner

Vs.

The Assistant Commissioner (ST)(FAC),
K.K.Nagar Assessment Circle,
5th Floor, PAPJM Annexe Building,
No.1, Greams Road,
Chennai – 600 006. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records in the impugned order CST 588887/2013-14 dated 05.04.2022 in the file of the respondent and quash the impugned order CST 588887/2013-14 dated 05.04.2022 passed by the respondent and direct the respondent to pass orders in accordance with law.

For Petitioner : Mr.T.Shanmugam

For Respondents : Mr.C.Harsharaj
Additional Government Pleader

ORDER

In this writ petition, the petitioner has challenged the impugned order dated 05.04.2022 passed under CST Act, 1956 for the Assessment Year 2013-2014.

2. Earlier, an Assessment order came to be passed on 14.02.2022 by invoking the machinery under Section 27 of the TNVAT Act, 2006 pursuant to notice issued to the petitioner. By the said order dated 14.02.2022 the Assessment that was earlier completed on 31.12.2015 was revised. In order dated 14.02.2022, it has been stated that as far as the Assessment order dated 31.12.2015 relating to export turnover was concerned, there was a mistake in calculation of the tax. Instead of Rs.47,94,596/-, the tax payable by the petitioner was mentioned as Rs.4,79,456/-.

3. The learned counsel for the petitioner would submit that the demand that was confirmed earlier on 31.12.2015 and later modified vide order dated 14.02.2022 had failed to notice that the petitioner was liable to pay tax only at 5% on the medical equipments traded by the petitioner and therefore even otherwise the tax at best could be levied at 5% not at 14.5%.

4. Under these circumstances, the petitioner had filed the Rectification Application under Section 9(2) of CST Act, 1956 read with Section 84 of the TNVAT Act, 2006 on 22.02.2022 which has been rejected without hearing the petitioner vide impugned order dated 05.04.2022.

5. That apart, the learned counsel for the petitioner would submit that part of the demand is also covered by Section 19(2)(5) of TNVAT Act, 2006 and on the date of the aforesaid provision was no longer in the statue. It is submitted that all the aspects has not been considered by the respondent while passing the impugned order and therefore, he submits that the impugned order is liable to be quashed.

6. The learned Additional Government Pleader for the respondent on the other hand would submit that the petitioner has an alternate remedy by way of an Appeal before the Appellate Authority under Section 51 of the TNVAT Act, 2006 as made applicable to the Assessment under CST Act, 1956. It is further submitted that the demand pertains to the alleged failure on the part of the petitioner to furnish export documents to substantiate the exemption and therefore a tax of Rs.47,94,596/- has been imposed. It is therefore submitted that there is no case made out for interference.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

8. The petitioner's application filed under Section 84 of the TNVAT Act, 2006 as made applicable for Assessment under CST Act, 1956 has not been considered. The petitioner has also not been heard. Therefore, to balance the interest of the parties, Court is inclined to quash

the impugned order dated 05.04.2022 and remits the case back to the respondent to pass a fresh order on merits and in accordance with law as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. It is made clear that if the petitioner should file requisite documents to substantiate export or in the alternative produce the relevant documents for exemption under Notification, the petitioner will be liable to tax without any exemption/concession.

9. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

28.11.2024

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

The Assistant Commissioner (ST)(FAC),
K.K.Nagar Assessment Circle,
5th Floor, PAPJM Annexe Building,
No.1, Greams Road,
Chennai – 600 006.

C.SARAVANAN, J.

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C.SARAVANAN, J.

This case is listed today under the caption 'For Being Mentioned' at the request of the learned counsel for the Petitioner.

2. The learned counsel for the Petitioner would submit that this Court, vide Order dated 28.11.2024, has disposed of the Writ Petition in W.P.No.15341 of 2022. It is further submitted that in Paragraph No.8 of the aforesaid order, the last two lines reads as follows:

> *"8. ... the petitioner will be liable to tax without any exemption/concession."*

3. It is submitted by the learned counsel for the Petitioner the aforesaid lines be modified as follows:-

> *"8. .....the petitioner will not be liable to tax. In which case, the petitioner's claim for exemption may be considered."*

4. Considering the submissions made by the learned counsel for the Petitioner, Registry is directed to carryout the necessary corrections and re-issue the order copy afresh to the concerned parties.

5. All the other observations in the earlier order dated 28.11.2024 remains unaltered.

26.03.2025

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C.SARAVANAN, J.

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W.P.No.15341 of 2022
and
W.M.P.No.14500 of 2022

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