IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17991 of 2007 and
W.M.P.No. 19550 of 2017

M/s.Arokiya Foods,
Rep.by its Proprietor,
No.81-A, Azhagapurai Nagari,
Vellakovil 638 111. ... Petitioner

Vs.

1.The Secretary to Government
Commercial Taxes and Registration Department
Fort St.Geroge, Chennai 600 009.

2.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk,
Chennai 600 005.

3.Assistant Commissioner (CT)
Kangayam Assessment Circle
Kangayam, Tirupur District. .. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in his proceedings in Lr.No.Drafting Cell-II/3452/ 2017 dated 04.04.2017 and to quash the proceedings of the second respondent and direct the first respondent to consider the Waiver proposal submitted by the petitioner in this case on 23.01.2017.

For Petitioner : Mr.C.Baktha Siromoni
For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.C.Baktha Siromoni, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

2.The petitioner is a registered dealer on the file of the 3rd respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). The petitioner is aggrieved by an order passed by the 2nd respondent dated 04.04.2017 based on a representation given by the petitioner with regard to levy of tax and penalty on the sale of idli and dosai maavu (batter) for the assessment years 2009-2010 to 2016-2017. The petitioner requested for waiver of the amount which has been demanded. This application has been rejected by impugned order.

3.The petitioner's contention is that earlier the petitioner had approached the authority for clarification and advance ruling, who had clarified vide order dated 30.12.2016 which is a Review Order stating as follows:

> "6.In view of the above discussion, this committee clarifies that
>
> (i)Idly Wet Maavu (Battar) ,l;yp kht[, Doasai Wet Maavu (Batter) njhir kht[Addai Wet Maavu (Batter) mil kht[sold without brand name are liable to tax at 5% under Entry 51 of Part B of the First Schedule to the TNVAT Act, 2006. The clarification issued already in ACAAR No.11/2013-14 (Acts Cell-II/13137/ 2013) is reiterated.
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> (ii)However, branded - Idly Wet Maavu (Batter) ,l;yp kht[. Dosai Wet Maavu (Batter) njhir kht[, Addai Wet Maavu (Batter) mil kht[are taxable at 12.5% for the period from 01.04.2008 to 31.03.2010 and at the reduced rate of 4% between the period from 01.04.2010 and 11.07.2011 as per Notn No.II(1)/CTR/ 4(b-1)/2010 published in G.O.Ms.No.33 CT&R(B2), dated 29.03.2010; and at the rate of 5% from 12.07.2011 onwards as per Notn.No.II(1)/CTR/12(R-29)/2011 published in G.O.Ms.No.78 CT&R(B2), dated 11.07.2011."

4.The petitioner did not challenge the order passed by the advance ruling authority but thought fit to approach the Government seeking waiver. However, this application has been rejected by the 2nd respondent.

5.The learned counsel for the petitioner would submit that since the 2nd respondent was party to the decision passed by the advance ruling authority, the matter should have been dealt with by some other officer of equivalent cadre, since the 2nd respondent has rendered certain finding with regard to the clarification of the goods. Strictly speaking, there will not be any conflict of interest nor the principle that 'No one can be a Judge of his own cause' would apply, but however, to ensure that there is fairness in approach and to ensure that justice is done to the parties, it would have been better if the file had been assigned to some other officer of equivalent cadre as that of the 2nd respondent, who can take a decision on the application for waiver on merits and in accordance with law. With this view in mind, this Court passed the following interim order dated 17.07.2017:

> "Heard Mr.C.Bakthasiromoni, learned counsel for the petitioner.
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> 2.It is submitted by the learned counsel for the petitioner that the petitioner applied for a clarification before the authority for clarification and advance ruling and an order came to be passed on 30.12.2016, in which the Commissioner of Commercial Taxes is also a party to the decision. Subsequently, the petitioner submitted a waiver proposal dated 23.01.2017 to the Secretary to Government, Commercial Taxes and Registration Department and the same has been returned to the petitioner by the Commissioner of Commercial Taxes vide impugned proceedings dated 04.04.2017. It is further submitted that the Commissioner of Commercial Taxes is also the Secretary to Government, Commercial Taxes and Registration Department and the application should be dealt with by the Government and therefore, the Commissioner of Commercial Taxes should place the matter before the Government and the matter to be decided by a different Secretary as the present Commissioner was a party to the decision dated 30.12.2016.
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> 3.Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondents and seeks time to get instructions in the matter.
>
> 4.List the matter on 25.07.2017 at the end of the motion list."

6.The learned Additional Government Pleader appearing for the respondent has produced written instructions given by the Assessing Officer dated 03.11.2017. However, this would not cover the aspect pointed out by this Court in the order dated 17.07.2017.

7.Thus, considering the peculiar facts and circumstances of the case, without expressing anything on the manner in which the 2nd respondent has passed the impugned order and with a view to ensure that justice is not only done, but it should be seen to be done, the matter is directed to be placed before some other officer of equivalent cadre.

8.For the above reasons alone, the Writ Petition is allowed and the impugned order is set aside with a direction to the 1st respondent to place the files before some other officer of equivalent cadre so that a decision can be taken on the application filed by the petitioner for waiver. An opportunity of personal hearing shall be granted to the authorised representative of the petitioner before a decision is taken on the application. Pending disposal of the writ petition, the petitioner had the benefit of an interim order. The said order shall continue till the above direction is complied with and no coercive action shall be initiated against the petitioner. The above direction shall be complied with as expeditiously as possible preferably within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Sgl

To

1.The Secretary to Government
Commercial Taxes and Registration Department
Fort St.Geroge, Chennai 600 009.

2.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk,
Chennai 600 005.

3.Assistant Commissioner (CT)
Kangayam Assessment Circle
Kangayam, Tirupur District.

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W.P.No.17991 of 2017

SV(CO)
SP(29/11/2017)