IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM

THE HONOURABLE MR. JUSTICE M.DURAISWAMY

W.P.Nos.6505 to 6511 of 2018 and
W.M.P.Nos.8058 to 8064 of 2018

M/s.Nagaraj & Co P Ltd.,
rep by its Executive Director
Raju Seshadrinathan
No.4/262, Old Mahalingapuram Road,
Kandanchavadi, Chennai - 600 096,
now at No.156, 2nd Main Road,
Developed Plot, Perungudi
Industrial Estate,
Perungudi, Chennai - 600 086. .. Petitioner in all W.Ps.

Vs.

1.The Assistant Commissioner (CT) (Addl),
Thiruvanmiyur Assessment Circle,
No.141, Burmah Colony, Perungudi,
Chennai - 600 096.

2.The Commercial Tax Officer,
Group - IV, Enforcement Wing (South),
PAPJM Buildings, Greams Road,
Chennai - 600 006.

3.The Assistant Commissioner (CT),
Sholinganallur Assessment Circle,
No.141, Burma Colony, 5th Floor,
1st Main Road, Perungudi,
Chennai - 600 096. .. Respondents in all W.Ps.

Petitions filed under Article 226 of the Constitution of India to issue Writs of certiorarified mandamus to call for the records of the 1st respondent in TIN:33980920907/2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 dated 21.4.2014 (in WP.Nos.6505, 6507, 6065, 6511/18);and TNGST:0920907/2006-07 dated 21.04.2014 and (in WP.0506/18); and the consequential recovery notice issued by the 3rd respondent in Rc.Nos.149/2018/A3, 148/2018/A3, 150/2018/A3, 153/2018/A3, 151/2018/A3, 152/2018/A3 dated 13.03.2018;(in WP.Nos.6505, 6506, 6508 to 6511/18) and Rc.No.144/2018/A3 dated 08.03.2018 (in W.P.6507/18) and quash the same and further direct the 3rd respondent to grant an opportunity of being heard and pass orders without being influenced by the Enforcement Wing report forwarded by the 2nd respondent.

For Petitioner : Mr.V.Sundareswaran
(in all W.Ps.)

For Respondents: Mrs.G.Dhanamadhri
(in all W.Ps.) Government Advocate (Tax)

COMMON ORDER

By consent, the main Writ Petitions are taken up for disposal at the admission stage itself.

2.The petitioner has filed the above Writ Petitions to issue Writs of certiorarified mandamus to call for the records of the 1st respondent dated 21.04.2014 for the assessment years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and the consequential recovery notice issued by the 3rd respondent dated 13.03.2018 and 08.03.2018 and to quash the same and further direct the 3rd respondent to grant an opportunity of being heard and pass orders without being influenced by the Enforcement Wing report forwarded by the 2nd respondent.

3.It is the case of the petitioner that the 1st respondent had passed the impugned orders dated 21.04.2014 without affording an opportunity of personal hearing to the petitioner and that the impugned orders have been passed by the 1st respondent following the report of the Enforcement Wing forwarded by the 2nd respondent, which according to the petitioner is erroneous.

4.The learned counsel for the petitioner submitted that the petitioner should have been given an opportunity of personal hearing and not giving an opportunity of personal hearing is violative of principles of natural justice. Further, the learned counsel submitted that the 1st respondent had relied upon the report of the Enforcement Wing forwarded by the 2nd respondent while passing the impugned order, which is also erroneous.

5.Mrs.G.Dhanamadhri, learned Government Advocate (Tax) taking notice for the respondents submitted that since the petitioner is challenging the impugned orders passed in the year 2014, the impugned orders may be set aside and the matter may be remitted back to the 3rd respondent for fresh consideration on payment of at least a portion of the disputed tax.

6.In view of the submissions made by the learned counsel on either side, taking into consideration that the petitioner was not given an opportunity of personal hearing, which is violative of principles of natural justice, the impugned orders are liable to be set aside. Since the petitioner is challenging the orders passed in the year 2014 now, it would be appropriate to direct the petitioner to pay at least 30% of the disputed tax for each of the assessment years before the

3rd respondent as a condition precedent. Accordingly, the impugned orders are set aside on condition the petitioner paying 30% of the disputed tax before the 3rd respondent within a period of three weeks from the date of receipt of a copy of this order. On payment of the 30% of the disputed tax, the 3rd respondent is directed to take up the matter and decide the matter afresh, on merits and in accordance with law, after giving due opportunity of personal hearing to the petitioner.

7.With these observations, the Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (CT) (Addl),
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Chennai - 600 096.

2.The Commercial Tax Officer,
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No.141, Burma Colony, 5th Floor,
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Chennai - 600 096.

+ 1 cc to MR. V. Sundareswaran, Advocate Sr.21930
+ 1 cc to Special Government Pleader Sr.22499

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RV(CO)
EU(05/04/2018)