IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.6.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.15190 OF 2018 &
WMP.NOS.18034 TO 18036 OF 2018

M/s.Golden Fish Meal and Fish
Oil Company rep.by its Managing
Partner S.Sahul Hameed ...Petitioner

Vs

1.The Assistant Commissioner/
Commercial Tax Officer,
Cuddalore Town Assessment
Circle, Sub Jail Road,
Manjakuppam, Cuddalore District.

2.The Deputy Commissioner of
Commercial Tax, Commercial Tax
Office, Cuddalore Town,
Cuddalore District.

3.The Manager, Karur Vysysa Bank,
Thirupapuliyur Branch, 71,
Car Street, Thirupapuliyur,
Cuddalore-607002. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 1st respondent made in TIN.33364383469/2014-2015 dated 10.4.2017 and the order in RC. A3.1814/2017 dated 16.3.2018 and quash the same as illegal, arbitrary and non est in law.

For Petitioner : Mr.B.Vijay

For Respondents 1 & 2 : Mr.M.Hariharan, AGP

ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for respondents 1 and 2. Heard both. In view of the nature of relief this Court proposes to grant, notice to the third respondent is dispensed with and the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by an order of assessment passed by the first respondent dated 10.4.2016, by which, the first respondent reversed the input tax credit availed by the petitioner, demanded tax and levied penalty. The petitioner has also challenged the order passed by the Assistant Commissioner (CT)(FAC), Cuddalore Town Assessment Circle dated 16.3.2018 attaching the petitioner's bank account.

3. The petitioner has challenged the impugned orders on several grounds. The first ground is that they are in violation of the principles of natural justice, as they were never served with the revision notice dated 29.12.2016 issued by the first respondent.

4. The first respondent, in the impugned order dated 10.4.2017, admitted that the said revision notice was served on the petitioner by affixure. Thus, it has to be seen as to why the petitioner did not respond to the said revision notice, which was served by affixiure. The petitioner applied for consent to establish a fish meal and fish oil company in Cuddalore District and an order of consent was granted by the Tamil Nadu Pollution Control Board on 24.10.2013. By order dated 17.3.2015, the petitioner was also granted an order of consent to operate. In the meantime, there appears to have been objections from the local public for establishment of the unit and the petitioner was prevented from opening the unit.

5. Therefore, the petitioner approached this Court by filing W.P.No. 13037 of 2015 seeking a direction to grant police protection. The said writ petition was disposed of on 29.4.2015. After an order was passed by this Court directing the complaint to be considered by the Inspector of Police, Old Town Police Station, Cuddalore, the Revenue Divisional Officer passed an order of closure under Section 133 of the Criminal Procedure Code by order dated 28.10.2015.

6. Once again, the petitioner approached this Court by filing Crl.R.C. No.1159 of 2015 and this Court, after being

satisfied that the order passed by the Revenue Divisional Officer is without jurisdiction, granted an order of interim stay on 04.11.2015. Even thereafter, the petitioner was unable to open the unit, as the Tamil Nadu Pollution Control Board ordered for closure of the unit by order dated 04.11.2016. This order was challenged by the petitioner before the National Green Tribunal, South Zone, Chennai in Appeal No.151 of 2016 (SZ). However, the appeal was dismissed by the National Green Tribunal.

7. Thereafter, the petitioner pursued the matter before the Tamil Nadu Pollution Control Board and ultimately, the TNPCB, on being satisfied that the petitioner has fulfilled all the parameters, granted an order of consent to operate by order dated 14.11.2017. Subsequent to that, the petitioner appears to have commenced business. In the interregnum, the first respondent issued the revision notice dated 29.12.2016 and obviously, the notice could not be served because the petitioner company was closed. Hence, the petitioner cannot be put to prejudice on account of certain events, which took place beyond their control. The petitioner has reasonable explanation to offer on both the allegations made in the impugned order.

8. It is submitted by the learned counsel for the petitioner that no business activities were conducted during the relevant point of time and therefore, the question of purchase/sales suppression does not arise. He further submits that if one opportunity is granted to the petitioner to go before the Assessing Officer, they will place all the records to his satisfaction, explain the nature of transactions and convince the Assessing Officer that there is no suppression. He would also submit that the attachment of the petitioner's bank account may be directed to be lifted.

9. Considering the facts and circumstances of the case, this Court is inclined to grant one opportunity to the petitioner to go before the Assessing Officer, however, subject to a condition.

10. Accordingly, the writ petition is disposed of with a direction to the petitioner to pay 15% of the tax demanded in the impugned assessment order dated 10.4.2017, within a period of three weeks from the date of receipt of a copy of this order. If such payment is made, the petitioner is entitled to treat the impugned order dated 10.4.2017 as a show cause notice and submit their objections. On receipt of the objections, the first respondent shall redo the assessment on merits and in accordance with law. It is made clear that if the petitioner fails to

comply with the said conditional order, the benefit of this order would not enure to the petitioner and the writ petition would stand dismissed automatically without any further reference to this Court. On remittance of 15% of the tax demanded, the attachment of the petitioner's bank account shall be lifted forthwith. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner/Commercial Tax Officer,
Cuddalore Town
Assessment Circle, Sub Jail Road,
Manjakuppam, Cuddalore District.

2. The Deputy Commissioner of Commercial Tax,
Commercial Tax Office, Cuddalore Town,
Cuddalore District.

3. The Manager, Karur Vysysa Bank,
Thirupapuliyur Branch, 71,
Car Street, Thirupapuliyur,
Cuddalore-607002.

+2ccS to Mr.B.Vijay, Advocate, S.R.No.39524
+1cc to the Government Pleader, S.R.No.40003

WP.No.15190 of 2018 & WMP. Nos.18034 to 18036 of 2018

CS/26/06/18