IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.03.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. No.5008 of 2019
and
W.M.P.No.5716 of 2019

Tvl.Nazarath Foods (P) Ltd.
No.25, Vivekanander Street,
Thirumoolar Colony,
Anna Nagar West,
Chennai - 40
Represented by its Managing Director ... Petitioner

Vs.

1.The Assistant Commissioner (ST)
Aminjikarai Assessment Circle,
F-50, 2nd Floor, 1st Avenue,
Anna Nagar (East),
Chennai - 600 102.

2.The Commercial Tax Officer,
Group-VI, Enforcement (North),
C.T.Building, Greams Road,
Chennai - 6. ...Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceeding of the 1st respondent in TIN 33161023402/2011-12 dated 29.10.2018 and quash the same and direct the respondent to conduct fresh enquiry and pass assessment order for the year 2011-12.

For Petitioner: Mr.S.Mohan
for Mr.B.Ramesshkumaar

For Respondents: Nr.V.Haribabu,
Additional Government Pleader (T)

O R D E R

The writ petitioner has challenged impugned proceedings for the period 2011-12 dated 29.10.2018.

2.Mr.Haribabu, learned Additional Government Pleader (T) took notice for the respondents, when the matter was listed for admission. Though several grounds have been raised by Mr.S.Mohan, learned counsel appearing for Mr.B.Ramesshkumaar, learned counsel on record for the petitioner, the main ground canvassed is that the proceedings have been concluded without any opportunity having been granted to the petitioner. The impugned order of assessment states as follows:

> "To a notice was issued to the dealers in the reference 3rd cited to file objections. If any, to the above proposals. The dealer has received the notice on 25.09.2018. They have not filed any objections till date. Presumably they have none. Hence I have no other way to confirm the proposals as proposed in the notice."

3.The learned counsel would state that a notice dated 31.01.2018 was issued to which petitioner filed reply on 20.02.2018, in the following terms:

> "With reference to your notice dated 31.01.2018, received by us on 06.02.2018 in connection with above subject, we do hereby declare that TN VAT audit for Nazareth Foods Pvt Ltd., have been conducted on 18-8-2016 corresponding to the period 2007-08 to 2016-17, All the defects relating to TN VAT audit has been clarified and settled. We also paid tax amount of Rs.17,27,817/- by way of cheque bearing no.144436 dated 05.10.2016 drawn on SBI, Chennai.
>
> Herewith enclosing the sworn statement for your reference. We request you to kindly close all the issues relating to TN VAT audit."

4.Thereafter notice dated 18.09.2018 appears to have been issued by the assessing authority setting out the proposal for assessment as well as calling upon the petitioner to furnish (i) Profit loss and trading account, (ii)Month wise purchase and sales details, (iii) Purchase of capital goods details, (iv) TDS details , (v) Form WW and (vi) Copy of the monthly returns for the period in question. The following reply was filed on 27.09.2018:

> "We refer to your notice dated 18.09.2018, received by us personally, regarding uncleared defects noticed during Enforcement Audit for the years 2006-07 to 2016-17. Our auditor who has helped us on VAT Audit, is busily occupied in completing Income tax audit & filling of IT return before 30.09.2018. We regret our inability to furnish the clarification. We request

you to kindly give us time for two months submit the clarification related to the audit queries.

We also request you to favour with a personal hearing before passing any order."

5.The learned counsel appearing for the department was specifically directed to verify from the records as to whether the aforesaid reply has been received by the 1st respondent. He confirms today based on the instructions received in writing from the 1st respondent that letter dated 27.09.2018 has not been received by the 1st respondent. The learned counsel for the petitioner places strong reliance upon order dated 22.02.2019 passed for the period 2007-08 to 2016-17 by the Court in W.P.Nos.4007 of 2019 & batch wherein, on identical facts, the assessments have been set aside on the ground of violation of natural justice. According to him, the said order should be followed in the present cases as well.

6.However, there is a difference in the present matters. No objection was raised by the learned standing counsel for the respondent in W.P.No.4007 of 2019 to the setting aside of the impugned order and re-doing of the assessment, whereas in the present case, there are specific instructions given by the 1st respondent on the basis of which stiff objection is raised by the respondent to the request of the petitioner. I am thus inclined to put the petitioner on terms while setting aside the assessments for being redone afresh. In the interests of justice as well as consistency, the impugned orders of assessments are set aside upon condition that the petitioner pays 15% of the disputed tax. The petitioner will appear before the assessing authority on 11.04.2019 along with proof of remittance of the tax as aforesaid. Upon being satisfied with the compliance of the direction as aforesaid, the 1st respondent shall redo the assessment for the period 2010-2011 to 2016-17 along with assessments for the period 2007-08, 2008-09 and 2009-10 and complete the same within a period of four weeks from the date of conclusion of personal hearing.

7.The Writ Petition is disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sai

To

1.The Assistant Commissioner (ST)
Aminjikarai Assessment Circle,
F-50, 2nd Floor, 1st Avenue,
Anna Nagar (East),
Chennai - 600 102.

2.The Commercial Tax Officer,
Group-VI, Enforcement (North),
C.T.Building, Greams Road,
Chennai - 6.

+1cc to M/S.B.Ramesh Kumar, Advocate sr.25916
+1cc to the Special Government Pleader Sr.25615

W.P. No.5008 of 2019

srg 12/04/2019