IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-06-2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.14135 of 2019
And
W.M.P.Nos.14193 to 14195 of 2019

M/s.Lakshmi Agro Centre,
Represented by its Proprietor R.Santhanakrishnan,
No.74, Krishna Complex,
Cuddalore Road,
Panruti-607 106,
Cuddalore District. .. Petitioner

..Vs..

The Assistant Commissioner (State Tax),
Panruti (Town) Circle,
Panruti-607 106,
Cuddalore District. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in its impugned proceedings made in TIN:33276298929/2016-17 dated 6.6.2018 and the consequential recovery proceedings in Rc.No.A3/885/2018 dated 8.4.2019 and quash the same as illegal and arbitrary and consequently direct the respondent to accept the Audit Report in Form WW under Section 63-A of the TNVAT Act, 2006 for the financial year 2016-17 as per the judgment of the Hon'ble High Court of Madras in the case of Tvl. Nithra Furniture P. Ltd., Vs. The Assistant Commissioner (CT), Chrompet Assessment Circle, Chennai in W.A.Nos.1148 and 1149 of 2015 and re-do the assessment in accordance with law after affording an opportunity of personal hearing.

For Petitioner : Mr.J.Prasanna Kumar

For Respondent : Mr.M.Hariharan,
Additional Government Pleader.

O R D E R

Mr.J.Prasanna Kumar, learned counsel on record for sole writ petitioner and Mr.M.Hariharan, learned Additional

Government Pleader on behalf of the lone official respondent, are before this Court.

2. With consent of learned counsel on both sides, main writ petition itself is taken up, heard out and is being disposed of.

3. This writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity). Considering the narrow scope of the instant writ petition, suffice to say that the entire matter pertains to Audit Report in Form WW under Section 63-A of TNVAT Act, 2006 for the financial year 2016-2017.

4. There is no disputation or disagreement before this Court that the entire matter is covered by the principle laid down by a Hon'ble Division Bench of this Court in order dated 11.8.2015 made in W.A.Nos.1148 and 1149 of 2015.

5. To be noted, there is also no disputation or disagreement that the principle in Nithra Furniture P. Ltd vs. AC (CT), Chrompet Assessment Circle [WP Nos.1148 and 1149 of 2015 dated 11.8.2015] laid down by Hon'ble Division Bench has been followed by another Hon'ble Single Judge of this Court vide order dated 4.7.2018 in WP Nos.16628 and 16629 of 2018.

6. In the aforesaid backdrop, what assumes significance is the order/proceedings of learned Hon'ble Single Judge made at the time of admission i.e., order/proceedings made on 8.5.2019. It would be appropriate to extract the entire proceedings dated 8.5.2019 and the same reads as under:

> 'The petitioner has filed the instant writ petition, for a writ of certiorarified mandamus, calling for the records on the file of the respondent in its impugned proceedings made in TIN:33276298929/2016-17 dated 06.06.2018 and the consequential recovery proceedings in Rc.No.A3/885/2018 dated 08.04.2019 and quash the same as illegal and arbitrary and consequently, direct the respondent to accept the Audit Report in Form WW u/s.63-A of the TNVAT Act 2006, for the financial year 2016-17 as per the judgment of this Court in the case of Tvl.Nithra Furniture P. Ltd., Vs. The Assistant Commissioner (CT), Chrompet Assessment Circle, Chennai in WA Nos.1148 & 1149 of 2015 and re-do the assessment in accordance with law after affording an opportunity of personal hearing.
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> 2. The learned counsel for the

petitioner states that he was not able to produce the Audit report in Form-WW and that he would produce it before the assessment authority.

3. Ms.G.Dhanamadhri, learned Government Advocate (Taxes) takes notice on behalf of the respondent.

4. The petitioner is also directed to pay the penalty for belated submission of the Audit report in Form-WW. The petitioner will do so within a period of two weeks from today.

5. On such compliance, the respondent is directed to consider the Audit report in Form-WW, afford an opportunity of personal hearing and redo the assessment.

6. The attachment by the respondent be continued till the exercise is completed.

7. Post the matter on 20.06.2019, for further hearing.'

7. Adverting to paragraph-4 of the aforesaid proceedings/order, it is submitted without any disputation that the penalty has since been paid on 14.5.2019 along with Audit Report in Form WW.

8. Now that the penalty has been paid, in the light of Nithra principle and in the light of order/proceedings made by a learned Single Judge of this Court vide order dated 4.7.2018 in WP Nos.16628 and 16629 of 2018, the following order is passed:

(a) Impugned order dated 6.6.2018, bearing Reference No.TIN:33276298929/2016-17 is set aside. To be noted, impugned order is set aside only to facilitate assessment to be done afresh in the light of Audit Report in Form WW, which has since been filed along with penalty. In other words, it is made clear that this Court does not express any opinion or views on merits of the matter and all questions are left open.

(b) Now that the Audit Report in Form WW has been filed with the respondent, the respondent shall make the assessment afresh, taking into account the Audit Report in Form WW and pass assessment order afresh, within a period of four weeks from the date of receipt of a copy of this order.

(c) Now that the impugned assessment itself has been set aside, the consequential order dated 8.4.2019, bearing Reference Rc.No.A3/885/2018 inter alia freezing/attaching the Bank Account of the writ petitioner also stands set aside.

9. This writ petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner (State Tax),
Panruti (Town) Circle,
Panruti-607 106,
Cuddalore District.

2.The Branch Manager,
Central Bank of India,
Panruti.

+1cc to Mr.J.Prasanna Kumar, Advocate Sr.50964
+1cc to the Special Government Pleader Sr.51323

WP 14135 of 2019

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srg 02/07/2019