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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.07.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.20370 of 2019
and
WMP No.19700 of 2019

Tvl.Bharani Traders
No.14/10 M.C.Road
New Govindapuram
Ambur .. Petitioner

Vs.

The State Tax Officer
Ambur .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent dated 26.12.2018 in TIN No.TIN/33754265157/2017-18 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Ms.G.Dhanamadhri
Government Advocate

O R D E R

Mr.Adithya Reddy, learned counsel on record is before this Court. Ms.G.Dhanamadhri, learned Government Advocate accepts notice on behalf of sole respondent.

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

3.Subject matter of the instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006'), which shall hereinafter be referred to as 'TNVAT Act' for brevity.

4.To be noted, under TNVAT there is a set of rules in the

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nature of Subordinate legislation and these set of rules go by the name 'Tamil Nadu Value Added Tax Rules, 2007', which shall hereinafter be referred to as 'TNVAT Rules'.

5.Undisputed facts that emerge from the case file and the submissions made before this Court are to the fact that writ petitioner is a dealer under TNVAT Act and writ petitioner was filing monthly returns under section 21 of TNVAT Act. The respondent took the position that the writ petitioner dealer is not entitled to deemed assessment under Section 22 of TNVAT Act, as according to the respondent, monthly returns filed by the writ petitioner for the period from 01.04.2017 to 30.06.2017 (to be noted 'Assessment Year 2017-18', which shall hereinafter be referred to as 'said AY' ) had some discrepancies, which came to light when the business premises of the writ petitioner was inspected by the Enforcement Officers. On this basis, the respondent issued a revisional notice, which according to the respondent, was served on the writ petitioner dealer on 23.10.2018 and there is no disputation that the writ petitioner responded to this notice by sending in objections.

A perusal of the impugned order reveals that the objections have been considered, but when it comes to negativing the objections of the writ petitioner dealer, the impugned order says that actual stock of goods were taken in the presence of the dealers, compared with the accounts and arrived at difference which was accepted and signed by the dealer. To be noted, this is the only ground on which the objections have been negatived. Adverting to this, learned counsel for writ petitioner points out that a statement given to the Enforcement Wing officials cannot be the sole basis on which a best judgment assessment order can be passed and this principle has been laid down by this Court in Narasus Roller Flour Mills Vs. Commercial Tax Officer (Enforcement Wing), Sankagiri reported in (2015) 81 VST 560 (MAD).

Saying so, learned counsel for writ petitioner submits that Narasus principle comes to the aid of the writ petitioner dealer.

In response to this, learned Revenue Counsel at the outset pointed out that the impugned order is dated 26.12.2018 and the instant writ petition has been filed only on 10.07.2019, almost 6 months later. Learned counsel for Revenue also points out that the objections have been considered and therefore, it cannot be gainsaid that Narasus principle comes to the aid of the writ petitioner.

This Court has carefully considered the rival submissions. With regard to the first objection of the learned Revenue Counsel that the impugned order is dated 26.12.2018, learned counsel for writ petitioner submits that it was not served on the writ petitioner immediately and it was served on the writ petitioner much later.

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Considering the view this Court intends to take on the second ground of objection, this Court is of the view that it will not serve any purpose in embarking upon the exercise of ascertaining the exact date on which impugned order was served on the writ petitioner.

This takes us to the second ground raised by the learned Revenue counsel that the objections of the writ petitioner have no doubt been considered. The moment the objections are considered, Narasus principle comes to the aid of the writ petitioner dealer, but in the instant case, it has been considered, but negatived on only one ground and that one ground is that the dealer has accepted the difference and signed after the actual stock of goods were taken in the presence of the dealers and compared with the accounts. This exercise without any disputation happened only when the Enforcement Wing officials inspected the business premises of the writ petitioner dealer. Therefore, in sum and substance, the impugned order has been passed on the basis of the statement given by the writ petitioner dealer to the Enforcement Wing officials. Therefore, Narasus principle comes to the aid of the writ petitioner in a slightly difference manner in the instant case.

As it may not be a straitjacket Narasus Roller Flour Mills case, this Court after taking into account all the parameters and determinants is of the considered view that it would appropriate to pass the following order.

a) Impugned order dated 26.12.2018 bearing TIN No.TIN/33754265157/2017-18 shall be treated as show-cause notice.

b) Writ petitioner shall deposit 15% of the differential tax (excluding penalty) within a fortnight from the date of receipt of a copy of this order.

c) Post payment of 15% of differential tax, in the aforesaid manner, writ petitioner shall send in its objections along with proof of payment of 15% differential tax within another fortnight therefrom.

d) Post receipt of the objections, respondent shall embark upon the exercise of redoing assessment and pass revised assessment under Section 22(4) of TNVAT Act afresh by adopting the best judgment assessment method under Section 22(4) within six weeks from the date of receipt of objection sin a manner known to law.

e) Assessment so redone shall be served on the writ petitioner dealer under due acknowledgement in accordance with the Rules in this regard under TNVAT Ruels.

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This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

gpa

To

The State Tax Officer, Ambur

+1cc to Mr.Adithya Reddy, Advocate SR.No.59092

+1cc to Government Pleader SR.No.59666

W.P.No.20370 of 2019 in
WMP No.19700 of 2019

JP(CO)
GMY(19/08/2019)

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