IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.08.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.22440 of 2019
and WMP No.21819 of 2019

M/s.Q One Foods and Ingredients Pvt. Ltd.,
Rep. by its Chairman Sajive Manjila
D.No.2/119, Unjavelampatti
Udumalpet Road, Pollachi
Coimbatore District. ... Petitioner

vs.

The Assistant Commissioner (ST)
Pollachi Rural Assessment Circle
Pollachi, Coimbatore District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN 33122284036/13-14 dated 13.06.2019 and quash the same as illegal and to pass such further or other orders as this Hon'ble Court deems fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.S.Ramanathan

For Respondent : Ms.G.Dhanamadhri,
Government Advocate.

O R D E R

Mr.S.Ramanathan, learned counsel on record for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate on behalf of the lone respondent are before this Court.

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

3. There were two earlier listings of this writ petition before this Court. Those two listings were on 31.07.2019 and 02.08.2019. The two earlier proceedings dated 31.07.2019 and 02.08.2019 read as follows:

31.07.2019

'Mr.S.Ramanathan, learned counsel on record for writ petitioner is before this Court.

2. Learned counsel for writ petitioner submits that subject matter of 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 the sake of convenience and clarity. Writ petitioner is a dealer under TNVAT Act, monthly returns were filed under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act. When things stood thus, writ petitioner's case was taken up for scrutiny under Section 22(3) of TNVAT Act, a notice came to be issued and the same is dated 19.10.2015. Writ petitioner sent a reply to the notice on 02.12.2015.

3. According to learned counsel for writ petitioner, thereafter a revised assessment order, obviously under Section 27 of TNVAT Act came to be passed on 13.06.2019, bearing Reference No.TIN.33122284036/13-14 (hereinafter 'impugned revised assessment order' for brevity).

4. What is of significance is, vide the impugned revised assessment order besides tax liability, penalty under Section 27(4) of TNVAT Act has also been levied. Proviso to Section 27(4) of TNVAT Act mandates that a dealer has to be given reasonable opportunity of showing cause before imposition of penalty under Section 27(4) of TNVAT Act.

5. There is no mention about penalty in the aforesaid notice dated 19.10.2015. However, the impugned revised assessment order refers to a communication dated 01.04.2019, bearing Reference No.TIN 33122284036/13-14 and the same has been cited as No.3 in reference in the impugned revised assessment order. Learned counsel for writ petitioner, on instructions, asserts that this notice/communication dated 01.04.2019 was never served on the writ petitioner.

6. Therefore, as of today, in the hearing today, the contents of notice/communication dated 01.04.2019 is not clear, but there is certainly no mention about penalty under Section 27(4) of TNVAT Act in 19.10.2015 communication.

7. Faced with the above situation, Mr.V.Haribabu, learned Additional Government Pleader, who has accepts notice on behalf of the sole respondent, seeks time to get instructions specifically about service of aforesaid notice dated 01.04.2019 on the writ petitioner/contents of the same and report to this Court.

List this matter on 02.08.2019 in the 'Motion List'. Registry to show the name of Mr.V.Haribabu, learned State Counsel in the next listing.'

02.08.2019:

'Read this in conjunction with and in continuation of earlier proceedings of this Court dated 31.07.2019.

Today, learned Revenue counsel seeks some more time to get instructions and make submissions.

At request of Revenue counsel, list this matter in the 'Motion List' on 14.08.2019.'

4. Proceedings dated 31.07.2019 captures the central theme of this lis. In other words, core issue in this writ petition has been encapsulated in the proceedings dated 31.07.2019.

5. Today, learned Revenue Counsel, on instructions, based on records/files of the Department submits that 01.04.2019 communication has been dispatched only by ordinary mail and therefore, there is no acknowledgement for the same. To be noted, when a communication is sent by ordinary mail, there will be no postal receipt or other postal certification to demonstrate despatch too. In other words, respondent is not in a position to demonstrate that 01.04.2019 notice was served on the writ petitioner and is therefore, unable to controvert the positive assertion of the writ petitioner that 01.04.2019 notice was not received by writ petitioner.

6. As would be evident from earlier proceedings dated 31.07.2019, (reproduced supra), it will be clear that there is no mention about proposal to levy penalty under Section 27(4) of 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for brevity in the communication dated 19.10.2015. As already alluded to in the earlier proceedings dated 31.07.2019, proviso to Section 27(4) of TNVAT Act mandates that a dealer has to be given reasonable opportunity of showing cause before imposition of penalty under Section 27(4) of TNVAT Act. To be noted, proceedings of this Court dated 31.07.2019 and 02.08.2019 (extracted and reproduced supra) shall be read as in integral part and parcel of this order.

7. In the light of the aforesaid scenario and the narrative thus far, the following order is passed:

a) Impugned revised assessment order being order dated 13.06.2019 bearing Reference No.TIN 33122284036/13-14 is set aside. It is made clear that impugned order is set aside solely on the ground that writ petitioner has not been given an opportunity to show cause before passing an order of imposition of penalty under Section 27(4) of TNVAT Act. In other words, no opinion or view of this Court is expressed qua merits of the matter, more particularly qua impugned order.

b) Respondent is directed to redo the revised assessment after putting the writ petitioner on notice and the revised assessment shall be redone on the merits of the available material, writ petitioner's reply if any and the redoing of revised assessment shall obviously be in accordance with law.

c) Revised assessment redone in the aforesaid manner shall be done as expeditiously as possible and in any event within 12 weeks from the date of receipt of a copy of this order.

d) Revised assessment order redone in the aforesaid manner shall be served on the writ petitioner under due acknowledgement in accordance with the operating applicable Rules in this regard under TNVAT Act.

Writ petition is disposed of with the aforesaid directions. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Vsm

To

The Assistant Commissioner (ST)
Pollachi Rural Assessment Circle
Pollachi, Coimbatore District.

+1cc to Mr.S.Ramanathan Advocate, S.R.No.69142
+1cc to the Spl Government Pleader(Taxes), S.R.No.69987

NRJK(CO)
CB(24/09/2019)

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