IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.24319 of 2019
and
W.M.P.No.24074 & 24075 of 2019

Tvl. Shah Motilal Foods Limited
Represented by its Director Mr.Rajesh Gandhi
No.114 Shada Shiva Nagar
Madipakkam, Chennai-600 091. ... Petitioner

vs.

The State Tax Officer
Nanganallur Assessment Circle
No.30, Medavakkam Main Road,
Madipakkam, Chennai-600 091. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records of the respondent in order of assessment in TIN.33876471075/2017-2018 dated 02.05.2019 and quash the same and consequently, direct the respondent to grant opportunity of personal hearing to the petitioner to produce the documents in their possession for claiming exemption as provided under the Act.

For Petitioner : Mr.K.M.Aasim Shehzad

For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

The petitioner is aggrieved against the order of assessment dated 02.05.2019 relevant to the assessment year 2017-2018.

2. The case of the petitioner is as follows:

The petitioner-Company is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006, carrying on business in Milk products, more specifically dealing with the trading of unbranded butter, which is exempted from levy of tax under the TNVAT Act, 2006. The petitioner had disclosed all the details in the monthly returns. While so, the respondent sent a notice on 04.01.2019 alleging that the petitioner violated Section 63A(1) of the TNVAT Act, for not having filed the Form-WW and thus, called upon the petitioner to pay a sum of

Rs.10,000/- as penalty. The petitioner paid the said sum of Rs.10,000/- on 01.06.2019. In the meantime, the Director of the petitioner-Company viz., Deponent was arrested on 01.03.2019 for the alleged offence under Section 132 of the CGST Act. The Director of the petitioner-Company was inside the prison till 22.03.2019. However, another notice dated 01.03.2019 was issued calling upon the petitioner to file their objections. The petitioner was not aware of the said notice dated 01.03.2019. Subsequently, the impugned order was passed alleging that another final notice dated 22.04.2019 issued to the petitioner was also not responded. It is stated that no such notice dated 22.04.2019 was received by the petitioner. Therefore, the impugned order was passed in violation of principles of natural justice.

3. A counter affidavit is filed by the respondent, wherein, apart from saying other facts and circumstances, it is stated that another notice dated 22.04.2019 was issued to the petitioner as the last chance to produce the documents for the claim of exemption and the said notice was sent both to the Madipakkam address and Secundarabad address. It is further stated therein that neither the acknowledgment nor returned post was received by the respondent.

4. Heard both sides.

5. It is seen that the impugned order of assessment was passed on the reason that the petitioner has not responded to the notice of proposal. The impugned order has referred to three notices viz., 04.01.2019, 01.03.2019 and 22.04.2019. Insofar as the first notice dated 04.01.2019 is concerned, the petitioner is not disputing the receipt of the same and however, it is stated that the petitioner has paid the penalty of Rs.10,000/- on 01.06.2019. Insofar as the other two notices viz., 01.03.2019 and 22.04.2019 are concerned, it is the specific case of the petitioner that those notices were not served on the petitioner. In any event as it is stated that the Director of the petitioner-Company was kept in prison from 01.03.2019 to 22.03.2019, this Court is of the view that the notice dated 01.03.2019 cannot be taken into account as the notice served on the petitioner. Likewise, in respect of the notice dated 22.04.2019, though it is claimed by the respondent that the same was sent to the petitioner, it is specifically denied by the petitioner that the same was not served on them.

6. Under such circumstances, it is for the respondent to establish the proof of service. However, it is stated that the respondent is not having acknowledgment or returned post relevant to the notice dated 22.04.2019. Therefore, it is to be construed that no such notice was served on the petitioner. Thus, it is evident that the impugned order was passed without issuing notice to the petitioner or effecting proper service of the same. At the same time, this Court is not expressing

any view on the merits of the claim made by the petitioner seeking for exemption, as it is for them to prove with necessary documents before the Assessing Officer.

7. Considering the fact that the impugned order was passed only on the reason that the petitioner has not filed any reply to the notice dated 22.04.2019, this Court is of the view that a final opportunity shall be granted to the petitioner so as to enable them to appear and place all the material documents before the Assessing Officer to redo the assessment on merits and in accordance with law.

8. Accordingly, this writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment under the following terms and conditions:

(a) The petitioner shall treat the impugned assessment order itself as a notice of proposal and file their objections along with necessary documents in support of their claim, within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such objections along with necessary documents, the Assessing Officer shall fix the date of personal hearing and hear the petitioner on the said day.

(c) On completion of such personal hearing, the Assessing Officer shall pass fresh order of assessment on merits and in accordance with law, within a period of four weeks thereafter.

(d) If the petitioner fails to adhere to the terms of this order viz., filing of the reply within the time stipulated herein and also appearing for personal hearing on the date so fixed by the Assessing Officer, the impugned assessment order stands restored automatically.

It is made clear that this Court is not expressing any view on the merits of the claim made by the petitioner, as it is for the Assessing Officer/respondent to consider and decide the same. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

mk

To

The State Tax Officer
Nanganallur Assessment Circle
No.30, Medavakkam Main Road,
Madipakkam, Chennai-600 091.

+1cc to M/s.BFS Legal, Advocate SR.No.98601

W.P.No.24319 of 2019

CP(CO)
GMY(28/11/2019)