IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.27351 of 2019
and
WMP.Nos.26792 & 26793 of 2019

M/s.Sri Venkatachalapathy Rice & Sago Factory
Represented by Proprietrix
Mrs.K.Suseela ...Petitioner

vs.

The State Tax Officer
Attur Rural Circle
Attur Taluk, Salem District. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the files of the respondent herein in TIN No.33593261683/2016-2017 dated 22.07.2019 received on 01.08.2019 and quash the same.

For Petitioner : Mr.S.Rajesh
For Respondent : Mr.M.Hariharan
Additional Government Pleader (T)

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondent. By consent of the parties, the writ petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed challenging the order of the respondent dated 22.07.2019, revising the assessment relating to the assessment year 2016-2017.

3. Heard both sides.

4. The petitioner is a registered dealer on the file of the respondent. They are involved in the activity of manufacturing Sago. For the assessment year 2016-2017, they filed their monthly returns and the assessment was finalized under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006, as deemed assessment, accepting the

reported turnover. However, the Assessing Officer issued a revision notice dated 09.01.2019 and called upon the petitioner to file their objections on the proposal made in the revision notice. The Assessing Officer raised two issues/defects in the revision notice as follows:

> "1. You have claimed exemption on the sales turnover of Rs.2,24,38,502.00 being the sales to the Registered dealers in Special Economic Zone. You have not filed any documentary evidences in support of the claim of exemption. Hence the exemption will be disallowed and assessed to tax.
>
> 2. Verification of the certificate issued by the "Sago Serve" reveals that there was a return of 2824 bags of Sago. You have not filed any records for the return of the above goods. The value of the goods will be estimated and assessed to tax."

5. The Assessee filed their objections on 30.01.2019 and requested to drop the revision proposal notice. Thereafter, the Assessing Officer passed the impugned order of assessment, wherein, he accepted the objections raised by the petitioner insofar as Defect No.1 is concerned and allowed the claim of Rs.2,24,38,502/- by observing as follows:

> "The dealers have claimed exempted on the sales to sago serve, Salem and filed tax paid certificate obtained from sago serve, Salem. Therefore, the claim of exemption of Rs.2,24,38,502/- is allowed."

6. However, insofar as Defect No.2 is concerned, the Assessing Officer found that the dealers have not filed related documents like L.R. copy and copies of Form JJ in support of their sales return and that the opening stock value, when compared with market price, was declared with lesser value. Therefore, the Assessing Officer imposed the tax to the tune of Rs.5,64,863/- and also penalty at the rate of 150% amounting to Rs.8,47,294/-.

7. The grievance of the petitioner before this Court is that when the reply to the notice of proposal was filed by the petitioner, documents in support of their objections like tax invoices etc., were also filed and however, the Assessing Officer, without giving an opportunity of personal hearing to the petitioner, has

proceeded to reject the objections in respect of Defect No.2, merely, on the reason that the petitioner did not produce the L.R. copy and copies of Form J.J., which in fact, is in the possession of the petitioner. Therefore, it is contended that the same could have been produced before the Assessing Officer, had there been an opportunity of personal hearing.

8. The learned counsel for the petitioner reiterated the above contention by way of his oral submission.

9. The learned Additional Government Pleader (Tax) for the respondent submitted that the Assessing Officer has passed the impugned order of assessment after considering the objections raised by the petitioner and therefore, it does not require any interference.

10. Perusal of the impugned order of assessment would show that the Assessing Officer has chosen to accept the objections raised by the petitioner insofar as Defect No.1 is concerned as discussed supra. Now, the dispute is only with regard to Defect No.2. The reason stated for confirming the proposal insofar as Defect No.2 is that the petitioner did not produce certain documents. Admittedly, before passing the impugned order, the Assessing Officer has not called upon the petitioner for attending personal hearing, more particularly, when the Assessing Officer is intending to impose penalty. In any event as it is contended by the learned counsel for the petitioner that the petitioner is in possession of those documents referred to in the impugned assessment order in respect of Defect No.2, this Court is of the view that an opportunity can be provided to the Assessee to produce those documents, so that the Assessing Officer can go through the same and decide as to whether the contentions raised by the Assessee in respect of Defect No.2 can be accepted or not.

11. Therefore, only for providing an opportunity of personal hearing to the petitioner to produce those documents, this Writ Petition is allowed and the impugned order in respect of the findings rendered on Defect No.2 is set aside and the matter is remitted back to the Assessing Officer for providing personal hearing to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On the date so fixed for personal hearing, the petitioner shall appear and produce all necessary documents before the Assessing Officer. On completion of personal hearing, the Assessing Officer shall pass fresh orders on merits and

in accordance with law within a period of four weeks from the date of completion of personal hearing. It is made clear that this Court is not expressing any view on the merits of the matter, as it is for the Assessing Officer 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
Attur Rural Circle
Attur Taluk, Salem District.

+1cc to Mr.S.Rajesh , Advocate SR.No. 79151
+1 cc to Spl Government Pleader Sr.No. 79854

W.P.No.27351 of 2019

A.SK(17/09/2019)