IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.28935 & 28941 of 2019
and
W.M.P.Nos.28685, 28686 & 28691 of 2019

ID fresh Food (India) Private Ltd.,
Represented by its Vice-President-Finance
Mr.M.S.Hegde ...Petitioner in both W.P.s

vs.

The Commercial Tax Officer
Thirumudivakkam Assessment Circle
Plot Nos.32 & 33, Sripuram 2nd Street
Chenni - 600 044. ... Respondent in both W.P.s

Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent passed in CST/1302673/2015-2016 dated 25.07.2017 and 26.11.2018 respectively and quash the same as the impugned proceedings is arbitrary and in violation of principles of natural justice and further direct the respondent to re-do the assessment in accordance with law after providing sufficient opportunity to the petitioner.

For Petitioner in both W.P.s : Mr.N.Murali

For Respondent in both W.P.s : Mr.M.Hariharan Additional Government Pleader

C O M M O N O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent in both these writ petitions. By consent of the parties, these writ petitions are taken up for final disposal at the admission stage itself.

2. W.P.No.28935 of 2019 is filed against the order of assessment dated 25.07.2017 relevant to the assessment year 2015-2016. W.P.No.28941 of 2018 is filed challenging the proceedings dated 26.11.2018 in rejecting the rectification

petition filed by the petitioner in respect of the very same assessment year.

3. Heard both sides.

4. The petitioner is an Assessee under the respondent. In respect of the assessment year 2015-2016, a notice of proposal was issued on the petitioner proposing to determine the total and taxable turnover at Rs.1,83,38,509/- and for assessing such turnover tax at 14.5%, on the reason that the petitioner having not filed C-Form declaration to avail concessional rate of tax at 2%. The said notice dated 11.01.2017 though was received, however, was not responded by the petitioner by filing any reply/objection. Consequently, the Assessing Officer confirmed the proposal and imposed the tax liability of Rs.26,59,084/-. Thereafter, the petitioner seems to have filed Form-WW before the respondent and also filed an application for rectification dated 11.04.2018. The said rectification petition was rejected by the respondent by an order dated 26.11.2018 by stating that in the absence of any declaration forms due for verification under CST Act, the request of the petitioner for revision of assessment is not acceptable.

5. However, perusal of the said order dated 26.11.2018 clearly indicates that the petitioner along with their representation dated 11.04.2018 filed Form-WW and paid the penalty for belated filing of Form WW also. Therefore, it seems that some confusion has occurred in the mind of the respondent in taking note of Form-WW filed by the petitioner belatedly, however, by paying penalty for such belated filing. Therefore, this Court is of the view that the matter needs to be considered by the respondent once again on merits and in accordance with law. However, such indulgence can be shown to the petitioner by putting them on some terms.

6. Admittedly, the petitioner have not chosen to respond to the notice of proposal dated 11.01.2017 and that they have also approached this Court with some delay in challenging the impugned orders. Accordingly, without expressing any view on the merits of the contentions raised in both the writ petitions, W.P.No.28941 of 2019 is allowed and the order dated 26.11.2018 is set aside. Consequently, the matter is remitted back to the respondent for reconsidering the rectification petition on merits and in accordance with law by looking into the materials already filed by the petitioner, subject to the condition that the petitioner pays 50% of the tax demand within a period of two weeks from the date of receipt of a copy of this order. On receipt of such payment, the respondent shall consider the rectification petition afresh and pass orders on the same on merits and in accordance with law, within a period of four weeks

thereafter. Insofar as the balance 50% of the tax demand is concerned, the respondent is directed not to take any coercive steps to recover the same pending disposal of the rectification petition as directed supra.

7. Since this Court is remitting the matter before the respondent for reconsidering the rectification petition alone, the writ petition filed against the order of assessment dated 25.07.2017 in W.P.No.28935 of 2019 is closed for the present. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Commercial Tax Officer
Thirumudivakkam Assessment Circle
Plot Nos.32 & 33, Sripuram 2nd Street
Chennai - 600 044.

+2cc to Mr.N.Murali, Advocate, SR.No.84727 & 84728
+1cc to Special Govt.Pleader (Taxes) Vide Sr.No.85277

W.P.Nos.28935 & 28941 of 2019

Kak(07/11/2019)