IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21.10.2019

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.30096,30099 and 30102 of 2019
and
W.M.P.Nos.30041, 30044 and 30045 of 2019

Tvl.GRB Dairy Foods Pvt Ltd.,
Plot No.44, SIPCOT Industrial Estate,
Hosur,
Krishnagiri District 635 126.

...Petitioner
in all W.Ps.

Vs.

1. The State of Tax Officer,
   Collection and Arrear,
   Office of Deputy Commissioner (ST) Intelligence,
   Salem.

2. The State Tax Officer (Intelligence),
   Central Intelligence Wing 2,
   Office of Joint Commissioner (ST) Intelligence,
   Salem.

3. The Assistant Commissioner (ST),
   Hosur (North) Assessment Circle,
   Krishnagiri District.

...Respondents
in all W.Ps.

COMMON PRAYER:Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the records of the impugned demand notice in Rc.No.B4/3403/2019-I, Rc.No.B4/3403/2019-II and Rc.No.B4/3403/2019-III dated 10.10.2019 from the file of the first respondent and quash the same.

For Petitioner in all W.Ps. : Mr.AL.Somayaji
Senior Counsel
for Mr.Poojesh J

For Respondent : Mr.M.Hariharan
in all W.Ps. Additional Government Pleader

COMMON ORDER

These writ petitions are filed challenging the demand notice dated 10.10.2019 relevant to the assessment years 2017-18, 2018-19 and 2019-20.

2. Heard Mr.A.L.Somayaji, learned Senior Counsel for the petitioner and Mr.Hariharan, learned Special Government Pleader, who took notice for the respondents.

3. In respect of the subject matter assessment years, orders of assessment, individually, were passed on 01.10.2019. It is stated that the same were served on the petitioner on 03.10.2019. The impugned demand notice is issued immediately on 10.10.2019, wherein and whereby, the petitioner was called upon to submit the proof of payment of quantum of tax, interest, penalty determined by the Assessing Officer in respect of each assessment year on or before 21.10.2019, also by informing the petitioner that failure to do so would result in recovering the dues by initiating proceedings under Section 79 of the GST Act, 2017.

4. Learned Senior counsel for the petitioner submitted that the impugned demand notice issued within 10 days from the date of the assessment order cannot be sustained, since the same was issued even before the expiry of the period of limitation prescribed for filing the statutory appeal against those orders of assessment. Thus, it is contended that when three months time is available to the petitioner to file such appeal before the concerned Appellate Authority from the date of receipt of copy of the assessment order and when such time is yet to expire, the impugned demand notice hurriedly sent by the first respondent cannot be sustained. Learned Senior Counsel also invited this Court's attention to Section 107(6) of the Central Goods and Service Tax Act, 2017 and contended that when an appeal has to be filed, the appellant has to pay the admitted tax, interest and penalty in full and a sum equivalent to 10% of the remaining amount of tax in dispute. Thus, the learned Senior Counsel contended that when the appellant pays the amount as referred supra, while filing the appeal, the recovery proceedings for the balance amount gets stayed automatically, as provided under Sub Clause (7) of Section 106. After saying so, the learned Senior counsel submitted that the time limit is still available to the petitioner to file appeal before the concerned appellate forum and in the meantime, if the impugned proceedings is given effect to, it would greatly prejudice the interest of the petitioner.

5. Learned Additional Government Pleader, for the respondents, based on instruction, submitted that though the impugned demand notice was issued on the petitioner on 10.10.2019, today further communication is issued to the petitioner dated 21.10.2019, informing that the recovery proceedings initiated against the petitioner has been deferred as per the provisions of Section 78 of TNGST Act, 2017, since such recovery proceedings shall have to be initiated on failure of the payment of tax within three months from the date of service of such assessment proceedings. Therefore, he submitted that in view of the communication issued by the first respondent to the petitioner as stated supra, these writ petitions can be closed, as the petitioner cannot have any further grievance.

6. There is no dispute to the fact that the assessment orders were passed for the relevant assessment years on 01.10.2019 and communicated to the petitioner which according to them, were received on 03.10.2019. It is also not in dispute that the time prescribed for filing of appeal against those assessment orders has not expired. In the meantime, the impugned demand notice was issued to the petitioner asking them to submit the proof of payment of the tax, interest, penalty demanded through the assessment orders on or before 21.10.2019. However, further communication issued by the first respondent dated 21.10.2019 to the petitioner, a copy of which is placed before this Court, would show that the impugned proceedings has already been deferred by the Revenue, in view of the fact that the petitioner has time to file the statutory appeal and that the said time has not expired so far. When such being the admitted factual position, I do not think anything survives in these writ petitions to be adjudicated upon further, since the first respondent himself has chosen to defer the impugned proceedings through his communication dated 21.10.2019.

7. Accordingly, recording the above submissions made by the learned Additional Government Pleader and the communication issued by the first respondent dated 21.10.2019, these writ petitions are closed, as no further orders are necessary. No costs. The connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The State of Tax Officer,
   Collection and Arrear,
   Office of Deputy Commissioner (ST) Intelligence,
   Salem.

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   Central Intelligence Wing 2,
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+1 CC to Spl. Govt. Pleader (T) sr 88172.

W.P.Nos.30096,30099 and 30102 of 2019

PM(CO)
SP(21/11/2019)