IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.25243 of 2018
and
WMP.No.29347 of 2018

M/s.Arokiya Foods,
Rep. by its Proprietor,
No.81-A, Azhagapurai Nagar,
Vellakovil – 638 111. ... Petitioner

Vs.

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

3.Assistant Commissioner (CT),
Kangayam Assessment Circle,
Kangayam, Tirupur District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent for the proceedings in Lr.No.1090/D2/2018-7 dated 31.08.2018 and to quash this proceedings of the first respondent as illegal and direct the first respondent to place this Waiver proposals to the committee for the waiver proposals to decide the issue of waiver of taxes to the petitioner in light of the Government G.O. No.973, Revenue Department dated 27.05.1967.

For Petitioner :Mr.C.Baktha Siromoni

For Respondents :Mr.Master Ganesh
Government Advocate (Taxes)

ORDER

The prayer in this writ petition is for a Certiorarified Mandamus calling for the records of the 1st respondent dated 31.08.2018 and a quash of the same as illegal and furthering direct the 1st respondent to place the waiver proposal before the committee for waiver in accordance with G.O.No.973 dated 27.05.1967 constituting a waiver committee.

2.This petitioner has approached this Court earlier with the similar prayer as advanced now. Proposals for recovery of taxes and penalty for the periods 2009-2010 to 2016-2017 were issued by the Assessing Officer (R3) on 17.08.2016. The petitioner forwarded a waiver proposal to the Secretary to the Government, Commercial Taxes on 23.01.2017 seeking a waiver of taxes imposed for the aforesaid periods as per G.O.No.973 dated 27.05.1967. On 04.04.2017 the Commissioner of Commercial Taxes rejected the waiver proposal.

3.The petitioner approached this Court in W.P.No.17991 of 2017 complaining that no personal hearing had been granted to the petitioner and also arguing that the order ought not to have been passed by the same officer who had issued the clarification on the merits of the taxability of the commodity. Upon considering the arguments of the petitioner, a learned Single Judge of this Court passed an order on 13.11.2017 allowing the writ petition, setting aside the impugned order and directing the 1st respondent to place the request of waiver before some other officer of equivalent cadre. While doing so, this Court specifically noted that strictly speaking there is no conflict of interest nor application of the principle that 'no one can be a judge of his own case'. However the direction was issued only to ensure fairness. This has been done now under impugned order dated 31.08.2018 where an alternate officer has considered the request for the waiver sought and rejected the same.

4.The petitioner now produces a copy of Circular dated 25.08.2006 reiterating the original Circular passed in 1967 under which a waiver committee was constituted and argues that the application ought to have been placed before the waiver committee and not before the Commissioner. This sort of repeated and piece-meal requests are unacceptable. The petitioner has accepted the order of the learned Single Judge dated 30.11.2017 where this Court has directed the first respondent to place the file before another officer or equivalent cadre in order to ensure that there is fairness in approach. The petitioner also states that the 1st respondent ought not to have disposed the waiver petition himself, since the direction is for him to place it before some other order of equivalent cadre. However, the application has been heard and disposed by the Principal Secretary to Government, a high ranking officer of the Commercial Taxes Department. I am thus of the view that no prejudice has been caused to the petitioner and that there is no merit in this writ petition. The writ petition is dismissed, though with no costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

3.The Assistant Commissioner (CT),
Kangayam Assessment Circle,
Kangayam, Tirupur District.

+1cc to Government Pleader(Taxes) SR.NO. 103308

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nrl(co)
nr 28/02/2020