IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.17284 of 2012
and M.P.No.2 of 2012

M/s.K.B.K.Agency,
rep. by Proprietor,
38, KRG Nagar, Ganapathy,
Coimbatore. ..Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by the Secretary to Government,
CT & RE Department,
Fort St. George, Chennai.

2. The Assistant Commissioner (CT) (FAC),
Avarampalayam Circle,
Coimbatore. ..Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorari, calling for the records of the first respondent in Letter No.11061/D1/2009-4 and to quash the order dated 15.09.2010 passed therein.

For Petitioner : Mrs.C.P.Priya
for Mr.B.Raveendran

For Respondents: Mr.R.Swarnavel, GA (T)

O R D E R

With the consent of both the parties, the Writ Petition is taken up today and heard through video conferencing.

2. The petitioner's request for waiver of sales tax on the sale of maize starch effected by it for the Assessment Years 1998-99 and 2000-2001, came to be rejected by the first respondent herein on 15.09.2010 in the following manner:

"Sub: Tamil Nadu General Sales Tax- Assessments for the years 1998-99 and 2000-

2001-Requests for waiver of tax on the sale of maize starch-Regarding.

Ref: 1)Your petitions dated 29.05.2004 and 16.05.2005.

2)Orders of the High Court of Madras in W.P.No.12020/2009 dated 07.07.2009.

I am directed to invite attention to your petitions cited and to state that, as per the directions of the High Court in the reference second cited, the Government having carefully examined the petitions express their inability to comply with your request and reject the petitions as devoid of merits."

3. The learned counsel for the petitioner submitted that the order is cryptic and a non speaking one and therefore, is liable to be quashed.

4. I have perused the order passed by the first respondent herein as extracted above. As rightly pointed out by the learned counsel for the petitioner, there is absolutely no reasons assigned by the first respondent as to the basis on which the petitioner's request for waiver of tax on the sales of maize starch for the Assessment Years 1998-99 and 2000-2001 was rejected. The order is clearly a non speaking order and there is absolutely no application of mind on the part of the first respondent herein while rejecting the petitioner's claim. Apparently, such an order can be presumed to have been passed even without looking into the claim made by the petitioner. It is rather disappointing that a highest officer of the Government had chosen to pass such a kind of order, particularly, when the order emanated from the directions of this Court passed in W.P.No.12020 of 2009 dated 07.07.2009. On this short ground, the impugned order of the first respondent dated 15.09.2010 is liable to be quashed.

5. It is brought to the notice of this Court that pursuant to this impugned order, the second respondent herein had issued a demand notice dated 24.04.2012, threatening for action of recovery of the arrears under the Revenue Recovery Act, 1869. In view of the finding of this Court that the order of the first respondent in Letter No.11061/D1/2009-4, dated 15.09.2010 itself cannot be sustained, the consequential demand also requires to be interfered with.

6. In the light of the above observations, the impugned order in Letter No.11061/D1/2009-4, dated 15.09.2010, on the file of the first respondent, as well as, the demand notice dated 24.04.2012 issued by the second respondent herein, are

quashed. The petitioner herein is granted liberty to make a comprehensive application for waiver of sales tax on the sales of maize starch effected by it for the Assessment Years 1998-99 and 2000-2001 before the first respondent herein, within a period of 30 days from the date of receipt of a copy of this order. On receipt of such an application, the first respondent herein shall afford due opportunity of personal hearing to the petitioner and consider the petitioner's request by passing a speaking order. In any event, the consideration of the petitioner's waiver application is ordered to be completed by the first respondent, atleast within a period of 30 days from the date of receipt of the waiver application. In case, no fresh application is made by the petitioner herein, the first respondent shall pass orders on the original applications made by the petitioner on 16.05.2005 and 29.05.2004. The Writ Petition stands allowed accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

DP

To

1.The Secretary to Government,
CT & RE Department,
Fort St.George,Chennai.

2.The Assistant Commissioner(CT)(FAC)
Avarampalayam circle,
Coimbatore.

+1cc to Special Government Pleader(Taxes), Sr.No.28896

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and M.P.No.2 of 2012

SV(CO)
GS(21/10/2020)