IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 32129 of 2012

Nestle India Limited,
Represented by Assistant Manager,
R.Narayan,
6th Floor, Spencer Plaza,
Anna Salai, Chennai - 600 002. ... Petitioner

Vs

1. The Deputy Commissioner (CT) IV,
Large Tax Payers Unit,
Dugar Towers,
Marshal Road, Chennai - 600 008.

2. The Commercial Tax Officer-VII,
Large Tax Payers Unit-IV,
Egmore, Chennai - 8. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent in CST No.649651/2002-03 dated 13.09.2012, quash the same and consequently direct the 1st respondent to consider the F Forms submitted by the petitioner for the value of Rs.1,10,51,152/- on merits.

For Petitioner : Mr.S.Ravee Kumar
For Respondents : Ms.G.Dhanamadhri
Government Advocate

ORDER

The petitioner is aggrieved by the impugned communication dated 13.09.2012. By the impugned communication, the 1st respondent has rejected the request of the petitioner for revising the order of assessment dated 31.05.2004 as modified by order dated 30.11.2005 in CST/649651/ 2002-2003.

2. In the impugned communication it has been stated that the request for reassessment cannot be entertained as it was barred by limitation under section 55 of the TNGST, 1959 read with

section 9 (2) of the Central Sales Tax Act, 1956 as the original order of assessment was made as early as 31.05.2004.

3. It is the case of the petitioner that assessment order dated 31.05.2004 was revised by an order dated 31.11.2005. However, order dated 31.11.2005 was not served on the petitioner till 12.03.2012 though the said order was purportedly made ready on 30.11.2005.

4. After the receipt of the order dated 31.11.2005 on 12.03.2012, the petitioner made a request for revising the order of assessment by a communication dated 24.8.2012. In the aforesaid communication, the petitioner has informed that it had remitted a tax of Rs.22,79,830/- as advised pursuant to the order received on 12.3.2012. The petitioner has stated that after receipt of the order, it has received Form-F for a value of Rs.1,10,51,152/- and was submitting these forms for perusal and requested for refund of the tax paid in excess.

5. The learned Government Advocate for the respondents defends the impugned communication of the respondents. I have perused the records and consider the submissions of the learned counsel for the petitioner and the learned Government Advocate for the Commercial Tax Department.

6. There is no explanation forthcoming from the respondents as to why order passed on 30.11.2005 was communicated belatedly on 12.3.2012. It can be only surmised in the natural course of event due to transition in the taxing regime from TNGST, 1959 to Tamil Nadu Value Added Tax Act, and 2006 and change in the assessment circle of the petitioner perhaps may have led to non-communication of the order dated 13.11.2005 on the petitioner. Therefore, the petitioner cannot be denied the right to have the order revised under the provisions of the Act.

7. Therefore, without expressing further opinion and speculating on the cause for delay, I allow this writ petition by quashing the impugned order and direct the 1st respondent to pass an order revising the assessment in terms of section 55 of the TNGST Act, 1959 within a period of three months from date of receipt of this order.

8. This Writ petition stands allowed with the above observation. No costs.

Sd/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

arb

To
1. The Deputy Commissioner (CT) IV,
Large Tax Payers Unit,
Dugar Towers,
Marshal Road, Chennai - 600 008.

2. The Commercial Tax Officer-VII,
Large Tax Payers Unit-IV,
Egmore, Chennai - 8.

+1 cc to Mr.S.Raveekumar Advocate sr13411
+1 cc to the Special Government Pleader sr13561

W.P. No. 32129 of 2012

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aa30/03/2021