IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.34824 & 34825 of 2015
and
W.M.P.No.1 of 2015

J.R.Food Limited,
(Represented by its Director,
Dinesh Kothari),
Plot No.19 Modern Plaza, Third Floor,
Imperial Road,
Cuddalore - 607 002. ... Petitioner in both W.Ps.

Vs.

The Commercial Tax Officer,
Cuddalore Town,
Cuddalore - 607 001. .. Respondent in both W.Ps.

Prayer in W.P.No.34824 of 2015: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records on the files of the Respondent herein in TIN:33614381440/2014-15, dated 28.09.2015, and quash the same.

Prayer in W.P.No.34825 of 2015: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records on the files of the Respondent herein in TIN:33614381440/2014-15, dated 23.10.2015, and quash the same.

For Petitioner : Mr.N.Sriprakash
(in both W.Ps)
For Respondents: Mr.R.Swarnavel
(in both W.Ps) Government Advocate

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C O M M O N O R D E R

By this common order, both these writ petitions have been disposed.

2.In W.P.No.34824 of 2015, the petitioner has challenged the impunged Assessment order dated 28.09.2015 and in W.P.No.34825 of 2015, the petitioner has challenged the impugned order dated 23.10.2015 rejecting the application of the petitioner for rectification of the impugned order dated 28.09.2015. The case of the petitioner in these writ petitions are that the respondent has passed the impugned

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order dated 28.09.2015 without awaiting the expiry of time for filing Audit Report under Section 63A of the TNVAT Act, 2006.

3.He submits that Section 63A was inserted by Act No.18 of 2012 with a view to verify the correctness of the accounts and returns of the registered dealer. He submits that the time for filing the Audit Report in Form WW expires only on 31.12.2015. However, before the Audit Report in Form WW could be filed before the dead lines as per Rule 16A of the TNVAT Rules, 2007, The impugned Assessment order dated 28.09.2015 has been passed.

3.It is further submitted that the petitioner has also filed the returns on 28.09.2015 much before the expiry of the deadlines fixed for filing of the returns under Rule 16A of the TNVAT Rules, 2006. The other ground on which the impugned order are assailed is that the show cause notice which was issued to the petitioner on 11.06.2015 before passing the impugned order dated 28.09.2015 (impugned in W.P.No.34824 of 2015). It is submitted several rounds of communications were exchanged between the petitioner and the respondent. However, the respondent has decided the issue at the stage of issue a show cause notice itself as it evident from the following paragraph in the notice dated 11.06.2015 which reads as under:

> The reply filed by you are carefully examined. The plea cannot be accepted as the report received as per web report clearly shows that you have imported Vegetable oil from other countries using TIN No.33614381440 issued from this office.

4.Finally, it is submitted that the impugned order has been passed in a tearing hurry. Even though, further details were called from the petitioner which was furnished on 01.09.2015 without awaiting for further reply/representation, the impugned order have been passed.

5.On merits, the learned counsel for the petitioner also submitted that the respondent has taken the tarrif value of the entire import covered by several Bills of Entry and has come to a conclusion that there was a failure on the part of the petitioner to declare the correct turnover. Even though, a substantial part of the imports were directly sent to Pondicherry from the port and were therefore also outside the purview of the Assessment under TNVAT Act. Asfaras the first submission regarding passing of the order on 28.09.2015 before filing of Form WW before expiry of the limitation prescribed under Rule 16A of the TNVAT Rules 2007 is concerned, the learned counsel for the petitioner relied on the decision of this Court in W.P.No.1663 of 2015 vide order dated 28.01.2015.

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6.The learned counsel for the respondent submits that the impugned order is well reason and requires no interference. He submits that the petitioner has an alternate remedy and that there was no case made out for interference under Article 226 of Constitution of India. For the same reason, the learned counsel for the respondent also submitted that the impugned order in W.P.No.34825 of 2015 is also liable to be sustained.

7.Heard the learned counsel for the petitioner and the respondent.

8.The impugned orders that have been passed show that there is a pre-determination of issue by the respondent as it evident from the show cause notice. In any event, the basis on the demand proposed in the notice dated 11.06.2015 was furnished to the petitioner only on 01.09.2015 and before the petitioner could furnish further reply to substantiate its defence against the proposed increase in the turn over and the proposed tax in the said notice and the impugned order has been passed on 28.09.2015.

9.Since the order has been passed without giving adequate opportunity to the petitioner to file a additional reply to the show casue notice dated 11.06.2015 and since the relied upon the documents which formed in the basis of the said show cause notice were furnished to the petitioner only on 01.09.2015, I am of the view that the impugned order passed by the respondent deserves to be set aside, even though the petitioner may have an alternate remedy before the Appellate Authority.

10.In view of the same, the impugned orders are quashed and the cases are remitted back to the respondent to pass a speaking order within a period of three months in accordance with law. The petitioner is given liberty to file additional representation, if any, within a period of one month. Needless to state, before passing such order petitioner shall also be heard.

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11.These writ petitions stand disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Cuddalore Town,
Cuddalore - 607 001.

+1 cc to Spl Government Pleader(Taxes) Sr.No. 20030
+1cc to Mr.N.Inbarajan,Advocate SR.No. 19284

W.P.Nos.34824 & 34825 of 2015
and
W.M.P.No.1 of 2015

SVI(CO)
A.SK(22.06.2021)

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