IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.7256 of 2016
and
W.M.P.No.6460 & 6461 of 2016

J.R.Foods Limited,
(Represented by its Direcotr
Dinesh Kothari),
Plot No.19, Modern Plaza, Third Floor,
Imperial Road,
Cuddalore - 607 002. ... Petitioner

Vs.

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

Prayer: 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.33614381440/2013-14 dated 30.12.2015 and quash the same.

For Petitioner : Mr.N.Sriprakash
For Respondents: M/s.G.Dhanamadhri
Government Advocate

O R D E R

The petitioner has challenged the impugned order dated 30.12.2015 bearing reference No.TIN.33614381440/2013-14 for the Assessment year 2013-2014. In the impugned order the respondent has determined the total taxable turnover as 16,30,15,378/- and demanded the balance tax at Rs.75,02,996.00 and a penalty under Section 27(3)(c) of Rs.1,12,54,494.00/-. The operative portion of the impugned order reads as under:

> As regards item No.5, they are not dealing with Baby milk food. The sales invoice No.TKO/18/00007, dated 13.03.2014 for Rs.98280/- related to the sales of vegetable oil made to M/s.Manikandan Oil Trader, Villupuram upon which was reported in the monthly return for the month of March 2014. A verification of the said Annexure II of Monthly return, they have reported the same and hence it is acceptable and further

action is dropped.

They admitted that they effected purchases of Iron and Steel for Rs.22,180/- for their own use and hence they not reported the said purchase in the return. The reply filed by the dealers is acceptable and further action is dropped.

In view of the above, the objections filed by the dealers in respect of Import is not acceptable for the foregoing reasons and hence the proposals are confirmed. As the proposals are confirmed, penalty proposed in the notice is also confirmed.

In fine, the dealers are assessed to tax, under Section 27(3)(1) of the TNVAT Act 2006 for the year 2013-14 as detailed below:

Taxable turnover as per return	:Rs. 1,29,55,457/-
Taxable turnover as per web report	:Rs.15,00,59,921/-
Taxable turnover determined	Rs.16,30,15,378/- @ 5%
Total turnover determined	:Rs.16,30,15,378/-
Tax due	:Rs.81,50,769-00
ITC adjusted (-)	:Rs.NIL
Balance	:Rs.81,50,769-00
Paid	:Rs. 6,47,773-00
Balance	Rs.75,02,996-00

A demand notice in Form 'O' is issued.

Penalty due U/s.27(3)(c)	Rs.1,12,54,494-00
Paid	Rs.NIL
Balance	Rs.1,12,54,494-00

A demand notice in Form RR is issued.

2.The petitioner had imported four consignments of RBD Palmolein Oil during November 2013 to March 2014 during the Assessment year 2013-14. The Customs duty was paid on the tariff value and therefore the assessable value in the bill of entry reflected in the tariff value of four consignments. The three consignments were directly sent to the Pondicherry after warehouse and never entered into the State of Tamilnadu.

3.The last consignment covered by Bill of Entry No.4959358 dated 20.03.2014 was reported by the petitioner in their returns dated 16.03.2014. The respondent however, issued a show cause notice dated 11.08.2015 bearing reference No.TIN:33614381440 and proposed the levy of tax on the entire turn over. After the petitioner replied to the above notice by a reply dated 07.09.2015, a fresh notice was issued to the petitioner on 05.10.2015 wherein the sales turn over was proposed to be re-determined as 15,00,59,921/-.

4.The petitioner replied to the same which culminated in the impugned order. The impugned order is challenged primarily on the ground that the notice issued by the respondent shows that the pre-disposition of mind and he seeks to hold that the petitioner had not correctly declared the correct import value in their returns and therefore the petitioner was liable to pay tax and penalty under section 27 (3)(c) of the Tamil Nadu Value Added Tax.

5.The learned counsel for the petitioner further submits that though the petitioner has furnished records to substantiate that the first three consignments were directly sent to the Pondicherry and were duly supported by re-warehousing certificates, it has been ignored. After the imported goods were bonded, the respondents has still included the value for determining the taxable turn over. It is submitted that even if the respondent had any doubts they could have issued a corrigendum to which the petitioner would have replied explaining the difference in the tariff value adopted in the Bill of Entry for the purpose of payment of Customs duty at the time of import and the difference in the invoice value and which was declared in the returns filed on 16.04.2014.

6.The learned counsel for the respondent submits that the impugned order is well reason and requires no interference and therefore he prays for a dismissal of the present writ petition.

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

8.There is no dispute that the petitioner had imported four consignments of goods under four different Bills of Entry based on which first show cause notice dated 11.08.2015 was issued to the petitioner. However, there were certain mistakes in the calculations and therefore another show cause notice dated 05.10.2015 was issued to the petitioner. It was again replied by the petitioner on 19.10.2015 which has now culminated in the impugned order.

9.The petitioner has produced documents to substantiate that the imports covered by three consignments in the Bill of Entry dated 18.11.2013 and 18.12.2013 and 19.02.2014 were never sold in the Tamilnadu.

10.The difference in the value arises on account of the adoption of tariff value for the purpose of valuation under Section 14 of the Customs Act and for payment of Customs duty in the invoice value declared in the returns filed under the Tamil nadu Value Added Tax Act and the Pondichery Value Added

Tax Act. This ought to have been considered by the respondent, while passing the impugned order.

11.Since this aspect has not been considered by the respondent, the reasonings given in the impugned order by adding value of import declared in the four Bill of Entries and the turn over declared by the petitioner in the returns for a sum of Rs.1,29,55,457 is unsustainable. In any event, it would require a proper examination by the respondent. Therefore, I set aside the impugned order and remit the case back to the respondent to pass a fresh speaking order in accordance with law.

12.The respondent shall pass such speaking orders in accordance with law after calling the petitioner for hearing within a period of three months from the date of receipt of a copy of this order. After considering the representation of the petitioner dated 19.10.2015 and any fresh representation, which the petitioner may file at its discretion within a period of one month from the date of receipt of a copy of this order.

13.The Writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.N.Inbarajan, Advocate SR.No. 18856
+1 cc to Spl Government Pleader(Taxes) Sr.No. 20031

W.P.No.7256 of 2016
and
W.M.P.No.6460 & 6461 of 2016

EV(CO)
A.SK(08.07.2021)