IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **27.02.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.16001 of 2022

Azeem Transport Company,
Registered Partnership Firm,
Represented by its Partners,
1.A.Garbiey Nawas, S/o.N.Azeem Basha,
2.G.Rahila Begam, W/o.Garbiey Nawas. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Central II Assessment Circle,
Tiruppur. ... Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records of the respondent in Ref.No.3091/2005/A3 dated 10.01.2022 and quash the same and consequently direct the respondent to register the amendment sought by the petitioner vide online application dated 16.07.2022.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 10.01.2022 passed by the respondent, rejecting the petitioner's application seeking for amendment under the Tamil Nadu Goods and Services Tax Act, 2017 *(Hereinafter referred to as TNGST Act)* to reconstitute the partnership firm, thereby retiring the partners viz., N.Azeem Basha and his wife A.Haseena Begam from the partnership of Azeem Transport Company respectively from 18.04.2019.

2. The petitioner's application has been rejected on the ground that N.Azeem Basha is a partner of Azeem Transport Company and he is having personal dues amounting to Rs.2.5 Crores in respect of his other business by name M/s.Azeem Packaging and M/s.Nawas Garments. The petitioner categorically contends that N.Azeem Basha retired from the petitioner's partnership business as early as on 18.04.2019.

3. The petitioner has also filed the partnership reconstitution deed dated 18.04.2019 as well as the report maintained by the Registrar of Firms

under Section 59 of the Indian Partnership Act, 1932 to substantiate their claim that N.Azeem Basha and A.Haseena Begam have retired from the petitioner's partnership business on 18.04.2019 itself. Therefore, according to the petitioner, by total non application of mind to the said fact, the respondent has rejected the petitioner's application seeking for amendment as required under the TNGST Act pursuant to the reconstitution of the firm.

4. A counter affidavit has been filed by the respondent, reiterating the contents of the impugned order by stating that the petitioners are the partners of M/s.Azeem Transport Company and they are due to the tune of Rs.2.5 Crores to the respondent in respect of their other business viz., M/s.Azeem Packaging and M/s.Nawas Garments.

5. Learned Additional Government Pleader appearing for the respondent also would submit that steps have been taken by the respondent to ascertain the shareholding details of N.Azeem Basha in M/s.Azeem Transport Company, the petitioner herein, as well as in M/s.Azeem Packaging and M/s.Nawas Garments, the other firms / companies, where N.Azeem Basha is having a stake.

6. However, as seen from the impugned order dated 10.01.2022, the documents filed by the petitioner before this Court viz.,

a) The report maintained by the Registrar of Firms under Section 59 of the Indian Partnership Act, 1932 which reveals that N.Azeem Basha as well as his wife A.Haseena Begam retired on 18.04.2019 has not been considered by the respondent;

b) The reconstitution of the petitioner's partnership business under the reconstitution deed dated 18.04.2019 has also not been given due consideration by the respondent in the impugned order.

7. As seen from the aforementioned documents N.Azeem Basha seems to have retired from the petitioner's partnership business as early as on 18.04.2019 itself. Unless and until the aforementioned documents are considered by the respondent, the respondent cannot come to the conclusion that N.Azeem Basha is also involved in the petitioner's partnership business as well as in the other businesses viz., M/s.Azeem Packaging and M/s.Nawas Garments.

8. Having not considered the aforementioned documents that too when the petitioner has categorically stated that N.Azeem Basha is no longer involved in the petitioner's partnership business, this Court is of the considered view that by total non application of mind to the aforementioned documents, the impugned order has been passed by the respondent, rejecting the petitioners' application seeking for amendment as required under the TNGST Act. Hence, the impugned order has to be necessarily quashed and the matter has to be remanded back to the respondent for fresh consideration on merits and in accordance with law, after affording a fair hearing to the petitioner including granting them the right of personal hearing.

9. In the result, the impugned order dated 10.01.2022 passed by the respondent is hereby quashed and the matter is remanded back to the respondent for fresh consideration on merits and in accordance with law. The respondent is directed to pass final orders within a period of eight weeks from the date of receipt of a copy of this order, after affording a fair hearing to the petitioner including granting them the right of personal

hearing.

10. No Costs.

27.02.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

The Assistant Commissioner (ST),
Central II Assessment Circle,
Tiruppur.

ABDUL QUDDHOSE. J.,

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W.P.No.16001 of 2022

27.02.2023
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