IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.31675 of 2023
and
W.M.P.No.31301 of 2023

M/s.Balaji Aqua Traders,
Rep. by its Proprietor,
No.14/23, Sarvamaniya Street,
Sirkali – 609 111. ... Petitioner

Vs.

State Tax Officer,
Sirkali Assessment Circle,
Sirkali – 609 110,
Mayiladuthurai District. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the assessment proceedings for the year 2014-15 in TN: 33914000841/2014-15 dated 25.09.2023 and to quash this impugned proceedings passed therein and to direct the respondent to consider the representations on 23.10.2019 and pass fresh orders after verification of records for the year 2014-15 in the facts and circumstances of this cases.

For Petitioner : M/s.C.Baktha Siromoni

For Respondent : Mrs.K.Vasanthamala
Government Advocate

ORDER

The challenge in the present writ petition is to the impugned order passed by the respondent dated 25.09.2023 and to quash the same and to direct the respondent to consider the petitioner's representation dated 23.10.2019 and pass fresh orders.

2. The case of the petitioner/assessee is that they filed GST returns and annual report in WW Form, however, the respondent, on scrutiny of the same, found that the petitioner had short reported the purchase turnover to the value of Rs.69,62,762/- and therefore, issued a show cause notice, which culminated in the impugned order. Hence, the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner is a Proprietor of Trading-Firm named as "M/s.Balaji Aqua Traders, which involves purchasing and selling of Prawn Feeds in the State of Tamil Nadu. For the Assessment Year 2014-2015, the petitioner-Firm filed monthly A1 returns and claimed exemptions for the local sales of prawn feeds, which are exempted from the sales tax in the State of Tamil Nadu, since, according to the petitioner's case, the sale of fish feed is exempted from sales tax for the assessment year 2014-2015 under the Tamil Nadu Value Added Tax Act, 2006 and CST Act.

3.1 The learned counsel further submitted that since there was a difference in the returns filed in WW Form and A1 returns to an extent of Rs.69,62,762/-, the respondent issued a show cause notice to the petitioner requiring the petitioner to appear before them and explain the reasons for such omission and that, why they failed to mention about the 15 bills, which is worth of Rs.70,19,562/-. The petitioner, on receipt of the show cause notice filed reply/objection stating that they purchased the items, which are exempted from payment of tax both under the provisions of TNVAT Act and CST Act and also produced all 15 purchase bills in order to prove their claim that the purchase made by them all are of exempted categories of goods, however, the respondent, verifying the Bills produced and without giving any findings as to rejection of the claim, merely stated that the objections filed by the petitioner are overruled and passed the assessment order. Hence, the learned counsel prayed for allowing the Writ Petition.

4. The learned Government Advocate appearing on behalf of the respondent would submit that the petitioner has simply enclosed 15 purchase bills, which were stated to have been omitted to be reported by them, but, even after the adjustment of differential amount of a sum of Rs.69,62,762/-, still, they do not tally the difference amount of Rs.56,800/-, which came to be excess and the respondent, considering all these facts, passed the assessment order.

5. I have given due considerations to the submission made by the learned counsel appearing for the petitioner and the learned Government Advocate for the respondent and perused the materials on record.

6. A perusal of the impugned order, it is seen that the petitioner produced 15 bills to prove their claim that the goods purchased by them, viz., 'Prawn Feed' vide 15 Bills would fall under exempted categories and the respondent also accepted the receipt of the goods by virtue of 15 bills. Therefore, there is no dispute with regard to the purchase made by the petitioner vide 15 Bills. According to the petitioner, they are not liable to pay tax since the goods purchased by them would fall under exempted category.

Therefore, if according to the respondent, the goods purchased by the petitioner is not covered under the exempted categories and it is taxable one, then, he is bound to state under which provision of law, the goods are taxable, and render findings to such effect and the respondent cannot deny the claim of the petitioner by merely stating that the goods purchased by the petitioner are taxable.

6.1 Further, when the petitioner-Firm, themselves, have admitted the mistake that they failed to report the purchase made through 15 bills while filing A1 returns due to the reason that the goods, viz., prawn feed was introduced for the first time under the exempted category during the relevant assessment year only and the said omission is due to inadvertence and not to evade any tax, the respondent ought not to have passed the assessment order by simply overruling the petitioner's objection, and the respondent is bound to provide the reasons, as to why he has not granted exemption.

6.2 That apart, the manner, in which, the respondent has passed the impugned order by merely stating that the objections are overruled, without assigning any reasons would per se show that he is not at all interested in considering the petitioner's claim and is only keen on rejection. Therefore, the rejection of the petitioner's claim without verification of the Bills produced by the petitioner and without rendering any clear cut findings, is untenable.

6.3 Of course, under the provisions of the Act, the petitioner has an Appellate remedy to challenge the order passed by the respondent/Assessing Officer/Original Authority before the Appellate Authority, by way of preferring Appeal and that the petitioner is entitled to have two occasions of the matter to be adjudicated by two Authorities and thereby, to avail two well considered opinion, it is not a fault of the petitioner to get first opinion from the Original Authority, and in the present case, the failure on the part of the respondent/Assessing Officer to render any clear-cut findings, would deprive the petitioner's rights of defending themselves before the Appellate Authority, despite the fact the Appellate Authority has the power of the Assessing Officer to consider the issue on Appeal, the order to be passed by the Appellate Authority cannot be equated with the order that would be passed by the Assessing Officer, who would pass orders after considering the elaborate evidence, which are available before him. That apart, the assessee is also loosing one well considered opinion of the Assessing Officer, which the assessee is entitled to legally under the provisions of law.

6.4 Thus, for the above reasons,, this Court is inclined to set aside the impugned order passed by the respondent.

7. Accordingly, the Writ Petition is allowed, the impugned order dated 25.09.2023 is set aside and the matter is remanded back to the respondent concerned to re-consider the issue specifically with regard to the 15 bills, whereby, the petitioner had purchased the goods, viz., 'Prawn Feed only bill and pass a detail assessment order with regard to the non reporting of the sum of Rs.56,800/- since it is for the Assessment Officer to decide the issue as to whether the goods purchased by the petitioner vide those 15 Bills are exempted from tax or not. No costs. Consequently, connected Miscellaneous Petition is closed.

03.11.2023

Jeni

Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order

To

The State Tax Officer,

Sirkali Assessment Circle,
Sirkali – 609 110,
Mayiladuthurai District.

KRISHNAN RAMASAMY, J.

Jeni

W.P.No.31675 of 2023

03.11.2023