BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.5809 of 2023
and
W.M.P.(MD) No.5379 of 2023

Tvl.Nataraja Oil Mills (P) Ltd.,
Rep., by its Director,
No.2/16, Chennai Highways,
Uthangudi, Madurai. .. Petitioner

Vs.

The Commercial Tax Officer,
Melur Assessment Circle,
Madurai. .. Respondent

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records on the file of the respondent in TIN:33774940751/2011-12 dated 06.02.2023 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner	:	Mr.K.Soundararajan
For Respondent	:	Mr.T.Amjadkhan Government Advocate

ORDER

The writ petitioner is before this Court challenging the order passed by the respondent in his proceedings bearing TIN:33774940751/2011-12, dated 06.02.2023.

2. The brief facts, which have culminated for the filing of the present writ petition are as follows:

The petitioner is a manufacturer of edible oil and trader in pulses and grams etc., and an assessee on the file of the respondent under the erstwhile Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") as also the erstwhile Central Sales Tax Act, 1956 (hereinafter referred to as "the CST Act"). The petitioner would submit that they are manufacturing vegetable oil using the main raw material viz., sesame seeds, which is procured by them from other States after paying appropriate central sales tax under the CST Act to their sellers at other States. Packing materials are purchased locally for which appropriate tax under the TNVAT Act is paid to the purchasers. The petitioner would submit that the purchases and sales are reported in their regular monthly returns and the returns show the taxes paid and the other amounts due thereon, after deducting the input tax credit available to them as per the TNVAT Act and Rules.

3. It is the case of the petitioner that the petitioner's purchase and sales of pulses and their sales of oil and oil cakes, a by-product are exempted from levy of tax under the TNVAT Act as per Entry 65, 66 and 68 of Part-B of Fourth Schedule to the TNVAT Act. For the assessment year 2011-12, the petitioner reported a total and taxable turnover of Rs.32,26,77,710/- and Rs.11,49,96,835/- respectively in their monthly returns and taxes due were paid thereon. This return was accepted by the respondent and the assessment for the year 2011-12 was deemed to be completed on 31.10.2012 as per the provisions of Section 22(2) of the TNVAT Act.

4. While so, on 02.11.2012, 03.11.2012 and 05.11.2012, the Officers of the Enforcement Wing had inspected the petitioner's place of

business and in the course of inspection, the Inspecting Officers had alleged various defects and demanded the petitioner to pay taxes. The petitioner refused to make the payment and offered their explanations. The petitioner would submit that a statement was obtained from them and the Inspecting Officers without further enquiry or without verifying the petitioner's books of accounts and other connected documents and without affording an opportunity to the petitioner, unilaterally concluded the sale suppressions and ITC reversals and forwarded the proposals to the respondent to levy tax and penalty by re-opening the petitioner's above said completed assessment for the year 2011-12. On the basis of the report of the Enforcement Wing officers, the respondent had issued a revision notice dated 02.04.2018 proposing to levy huge tax and reverse ITC as also to levy penalty under Section 27 of the TNVAT Act. A detailed objection was submitted by the petitioner pointing out the defects in the claim. The respondent, without verifying the petitioner's books of accounts and conducting an independent enquiry and affording personal hearing, passed an order on 17.09.2018 in which the respondent dropped certain proposals to confirm other proposals without giving any reasons. The petitioner, therefore, filed W.P.(MD) No.21834 of 2018 seeking to quash the revision order of assessment dated 17.09.2018. This Court, after hearing the parties, had quashed the impugned order and remitted the matter back to the file of the respondent to pass orders afresh. Pursuant to this order, the petitioner had received a personal hearing notice dated 04.01.2023 calling upon him to appear before the respondent on 11.01.2023 with certain documents set out in the notice of personal hearing. The petitioner had appeared before the respondent and submitted a detailed objection on the same date. Despite receiving such a detailed response/objection and overlooking the orders passed in the earlier writ petition in W.P.(MD) No.21834 of 2018, the respondent once again has passed a non-speaking four lines order with reference to the subject matter of this writ petition. Challenging the same, the petitioner is before this Court.

5. The learned counsel appearing on behalf of the petitioner would submit that the petitioner has been purchasing raw material and the pulses outside the State all of which are supported by a C-Form

declaration. Even if the petitioner is not entitled to take umbrage under the above, the levy of tax is exempted for the products that he purchases as is squarely falls within the exemption as set out in Schedule IV, Part-B, Entry 68 of the TNVAT Act. The petitioner in his objections dated 11.01.2023 had clearly set out the above for the consideration of the respondent. The objections were also supported with documents viz., (i) copy of the delivery challan and accounted details; (ii) copy of profit and loss account, balance sheet; and (iii) copy of the credit notes. However, in the impugned order, which has all of three sentences, the authority has held as follows:

> *"9.Regarding levy of tax of Rs.7215279/- under Sec.12 at 5% on the turnover of Rs.144305571/- (urad gram), the reply of the dealers are not convincing and are not acceptable. Since they are not supported by valid documentary evidences. Hence, the levy of tax of Rs. 7215279/- is hereby ordered to be confirmed."*

6. This clearly displays not only the non-application of mind on the part of the respondent, but also the mechanical manner in which he has considered the objections of the petitioner. Since the order does not

comply to the earlier order and as it does not take into account the objections of the petitioner, the said order is quashed.

7. In the result, this Writ Petition is allowed, the impugned order is quashed and the respondent is directed to consider the objections already submitted by the petitioner along with the documents and pass a speaking order after affording an opportunity of personal hearing. The order shall reflect the fact that the authority has heard and considered the objections made by the petitioner. The learned Government Advocate would submit that the books of accounts were not produced, which contention was refuted. However, instruction is given to the petitioner to once again submit the books of accounts. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

17.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

abr

P.T.ASHA, J.

abr

To

The Commercial Tax Officer,
Melur Assessment Circle,
Madurai.

W.P.(MD) No.5809 of 2023

Dated : 17.03.2023