IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.21962 of 2015
and M.P.No.1 OF 2015

Sri Kumar Timbers and Plywoods
represented by its Proprietrix,
Mrs.K.Prema,
No.4/193, East Coast Road,
Palavakkam,
Chennai - 600 041. ... Petitioner

Vs.

The Commercial Tax Officer,
Sholinganallur Assessment Circle,
No.141, Burma Colony,
First Main Road,
Perungudi, Chennai - 600 096. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorarified mandamus calling for the records comprised in impugned order in TIN/33970924356/2011-2012 dated 30.03.2015 on the file of the respondent, quash the same and consequently direct the respondent to give opportunity to the petitioner before passing the revised assessment order.

For Petitioner : Mr.K.Magesh
For Respondent : Mr.S.Kanmani Annamalai, Addl.Govt.Pleader (Taxes)

ORDER

This writ petition has been filed by Srikumar Timbers and Plywoods represented by its Proprietrix challenging the impugned order dated 30.3.2015 passed by the Commercial Tax Officer, Sholinganallur Assessment circle on the ground that the impugned order has been passed in clear violation of principles of natural justice, as the respondent has not afforded any opportunity of personal hearing to the petitioner to put forth her case.

2. Learned counsel appearing for the petitioner would submit that the petitioner is a registered dealer for selling timbers and plywoods for the past ten years and has been paying the taxes regularly. The petitioner has opted to pay 0.5% tax on her monthly return under sub-section 4 Section 2 and Section 12 of Tamil Nadu Value Added Tax Act, (in short, ''TN VAT Act). Admittedly, the petitioner's annual turn over was also below Rs.50 lakhs. In conformation of the same, it has been pleaded by the petitioner that she has also filed returns for the month of July 2011 under Form K and for the monthly turnover of Rs.8,90,000/- she paid 0.5% tax of Rs.4,450/-. But one of the customers who had purchased goods on 22.7.2011 for a sum of Rs.3,73,190/- vide invoice No.353 subsequently cancelled the purchase order. As a result, the petitioner has also returned the Cheque issued by the customer. To this regard the petitioner has also filed revised return for the month of July, 2011 on 15.9.2011 with a request to revise the petitioner's monthly turnover from Rs.8,90,000/- to Rs.5,16,810/- along with a further request to adjust payment of tax of Rs.1,866/- in future payment. While so, the Thiruvanmiyur Assessment Circle issued notice dated 22.11.2012 informing the petitioner that the turnover exceeded Rs.50 lakhs, thereby the petitioner was liable to pay tax at the rate of 12.5% or more as applicable under TN VAT Act. Learned counsel submits immediately the petitioner filed an objection vide reply dated 30.11.2012 stating that the turnover for the assessment year 2011-2012 was only Rs.47,91,010/-. On this basis, the petitioner requested the Tiruvanmiyur Assessment Circle to drop the proposal. However, after lapse of two years, The Thiruvanmiyur Assessment circle issued another show cause notice dated 14.7.2014 again raising the same demand and demanded tax of Rs.6,54,149/- on the premise that the petitioner's concern had crossed the threshold limit of Rs.50 lakhs. Subsequently, another notice dated 30.1.2015 was also issued raising the same demand. The petitioner on receipt of both notices sent a reply on 25.2.2015 making clear that their annual turn over for the year 2011-2012 was Rs.47,91,010/- and as such the petitioner has not crossed the threshold limit. On this basis, once again the petitioner renewed the request to drop the proceedings initiated by the Thiruvanmiyur Assessment circle. In support of the petitioner's claim, the following documents were also enclosed:

''(i) Copy of cancelled sale invoice;
(ii) Copy of letter to CTO dated 15.09.2011;
(iii) Copy of revised Form K;
(iv) Copy of letter dated 30.11.2012 to drop the proposal.''

3. Subsequently, the files of the petitioner stood transferred to the Commercial Tax Office at Sholinganallur Assessment Circle. In view of the subsequent events took place, the respondent once again issued a notice dated 13.3.2015 informing the petitioner to submit the following documents:

> ''(i) Acknowledgement for the receipt of revised return for the July, 2011 said to have been filed by the dealer in the Assessment Circle has not been enclosed;

(ii) The reasons and cancellations of the invoice No.353, dated 22.07.2011 has not been furnished;

(iii) All the three copies of the cancelled invoice has not been produced for scrutiny;

(iv) Copy of the reply to the notice dated 23.11.2012 have not been filed with acknowledgement for the receipt of the same filed in the Assessment Circle may be filed.''

4. Again, the petitioner submitted all the documents on 20.3.2015 requesting the respondent to drop the proceedings as the petitioner has not crossed the limit of Rs.50 lakhs. Finally, the respondent, without considering the documents sent by the petitioner, has passed the erroneous order.

5. Learned counsel for the petitioner would further submit that nowhere the impugned order mentions about the application of judicious mind by the respondent, who is quasi judicial officer. The case of the petitioner has not even been discussed to give a finding in order to confirm the proposal made by the respondent. On this basis, he further pleaded that as the impugned order does not reflect the application of judicious mind by the respondent, the same is liable to be set aside.

6. Learned Additional Government Pleader appearing for the respondent virtually is not able to support the impugned order. The reason is when the learned counsel for the petitioner has demonstrated before this Court that after the receipt of notice dated 30.1.2015 he has sent a detailed reply on 25.2.2015 meeting all the queries raised, one another notice dated 13.3.2015 was issued by the respondent calling upon the petitioner to submit the following documents within fifteen days of receipt of notice:

''(i) Acknowledgement for the receipt of revised return for the July, 2011 said to have been filed by the dealer in the Assessment Circle has not been enclosed;

(ii) The reasons and cancellations of the invoice No.353, dated 22.07.2011 has not been furnished;

(iii) All the three copies of the cancelled invoice has not been produced for scrutiny;

(iv) Copy of the reply to the notice dated 23.11.2012 have not been filed with acknowledgement for the receipt of the same filed in the Assessment Circle may be filed.''

7. After receipt of that notice dated 13.3.2015, the petitioner had sent all the above four documents clearly mentioning therein that the invoice No.353 dated 22.7.2011 for a sum of Rs.3,73,190/- was cancelled with the return of cheque issued by the said customer and thereupon it was also further made clear that the petitioner has also filed revised return for the month of July 2011 manually on 16.9.2011 requesting the respondent to revise their monthly turnover from Rs.8,90,000/- to Rs.5,16,810/- with a further request to adjust the payment of tax of Rs.1,856/- in future payment. But nowhere these

documents have been considered. When the respondent has called for all the documents and subsequently in reference to the notice, all the documents having been sent by the petitioner, the respondent is duty bound to consider all the documents, atleast the documents called for from their side. When the petitioner has placed all the documents before the respondent including cancellation of the previous order and invoice dated 22.7.2011 for sum of Rs.3,73,190/-, followed by the filing of the revised return for the month of July 2011 to revise the monthly turnover from Rs.8,90,000/- to Rs.5,16,810/-, the respondent has not even considered the same. That shows there is an absence of application of judicious mind. Therefore, this part of the impugned order could not be sustained by the learned Additional Government Pleader appearing for the respondent. Therefore, this Court finding that the respondent has miserably failed to consider the entire case of the petitioner on the basis of the subsequent documents placed by the petitioner in response to the notice dated 13.3.2015, a direction is issued to the respondent - Commercial Tax Officer, Sholinganallur Assessment Circle to re-consider the entire issue and pass appropriate orders after granting personal hearing to the petitioner on merits and in accordance with law.

8. Accordingly, the writ petition stands allowed and the impugned order is set aside. However, there is no order as to costs. Consequently, the connected miscellaneous petition stands closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Commercial Tax Officer,
Sholinganallur Assessment Circle,
No.141, Burma Colony,
First Main Road,
Perungudi, Chennai - 600 096.
+1 cc to Mr.K.Magesh Advocate sr.38082
+1 cc to Special Government Pleader Taxes sr.37975

W.P.No21962 of 2015

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