IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.15747 of 2016 and
W.M.P.No.13674 of 2016

Tvl.Timber Zone India LLP,
rep by its Partner S.Kannadasan
D.No.7/482, Thiruvallur High Road,
Alamathi, Redhills,
Chennai - 600 052. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer Group -VIII,
Enforcement (North), CT Building, 1st Floor,
Greams Road, Chennai - 600 006.

3.The Assistant Commissioner (CT),
Cholavaram Assessment Circle,
No.22, Jawaharlal Nagar, 1st Street,
Redhills, Chennai - 600 052. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the 3rd respondent in his assessment order in proceedings in TIN:33641704369/2010-11 dated 28.03.2016 received by the petitioner on 06.04.2016 and quash the same and to direct the 2nd and 3rd respondent to refund or return the advance tax of Rs.10,00,000/- and compounding fees of Rs.2,000/- collected from the petitioner during the course of inspection on 10.04.2016 by following cheques dated 30.04.2015 - Rs.2,000/- Axis Bank Ltd., Chennai and 08.05.2015 - Rs.10,00,000/- Axis Bank Ltd., Chennai and afford an opportunity of personal hearing and pass fresh order of assessment for the assessment year 2011-12.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents: Mr.Manoharan Sundaram,
Additional Government Pleader (Tax)

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the 3rd respondent dated 28.03.2016 and to quash the same and to direct the 2nd and 3rd respondent to refund or return the advance tax of Rs.10,00,000/- and compounding fees of Rs.2,000/- collected from the petitioner during the course of inspection on 10.04.2016 and to afford an opportunity of personal hearing and pass fresh order of assessment for the assessment year 2011-12.

2.It is the case of the petitioner that by order dated 28.03.2016, the respondent had passed the impugned order without giving an opportunity of personal hearing and without giving an opportunity to the petitioner to file their objections and hence the same is violative of principles of natural justice, therefore, the impugned order is liable to be set aside. Further, the learned counsel appearing for the petitioner submitted that the 3rd respondent received two cheques dated 30.04.2015 and 08.05.2015 for a sum of Rs.2,000/- and Rs.10,00,000/- respectively, which were not encashed by the respondent till today. Since the cheques were issued by the petitioner in the months of April 2015 and June 2015, the same have become time barred. Hence, now the respondent cannot encash the cheques.

3.Mr.Manoharan Sundaram, learned Additional Government Pleader (Tax) taking notice for the respondents submitted that since the provisions of Section 22(4) of the TNVAT Act was not followed by the respondent, the impugned order may be set aside and the respondent may be directed to decide the matter afresh. So far as the cheques are concerned, the learned Additional Government Pleader submitted that since the cheques have become time barred, the respondents may be directed to return the same to the petitioner.

4.Having regard to the submissions made by the learned counsel on either side, since the provisions of Section 22(4) of the TNVAT Act has not been followed by the respondent while passing the impugned order dated 28.03.2016, it is clear violation of principles of natural justice and the same is liable to be set aside. Accordingly, the impugned order dated 28.03.2016 is set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is directed to file their objections within a period of two weeks from the date of receipt of a copy of this order. After the receipt of the objections, the 3rd respondent is directed to consider the same and decide the matter afresh, after affording due opportunity of personal hearing to the petitioner. So far as the cheques issued by the petitioner are concerned, since they are time barred, there is no use in keeping the cheques with the respondent. Hence, the respondents 2 & 3 are directed to return the cheques dated 30.04.2015 and 08.05.2015 to the petitioner within three days from the date of receipt of a copy of this order.

5.With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer Group -VIII,
Enforcement (North), CT Building, 1st Floor,
Greams Road, Chennai - 600 006.

3.The Assistant Commissioner (CT),
Cholavaram Assessment Circle,
No.22, Jawaharlal Nagar, 1st Street,
Redhills, Chennai - 600 052.

+1cc to the Special Government Pleader, Sr.26660
+1cc to Mr.A.S.Mujibur Rahman, Advocate sr.26511

W.P.No.15747 of 2016 and
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pur(CO)
srg(10/05/2016)