IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29909 of 2015
&
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 : Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records comprised in impugned order in TIN/ 33970924356 /2013-2014 dated 25.05.2015 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.V.Haribabu
Additional Government Pleader



ORDER

Heard Mr.K.Ramesh, learned counsel appearing for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader accepting notice for the respondent and with their consent, the Writ Petition is taken up for final disposal.

2.The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and in this writ petition, the petitioner has challenged the order of assessment dated 25.05.2015 for the assessment year 2013-2014. The impugned order has been challenged on the ground of violation of principles of natural justice stating that the order was passed without taking into consideration the petitioner's objections dated 28.05.2015 and that the impugned order has been antedated as 25.05.2015.

3.From the written instructions given to the learned Additional Government Pleader, it is seen that the order was passed on 25.05.2015 sent by registered post to the petitioner on 01.06.2015, but it was returned by the postal authority on 03.06.2015 alleging wrong pin code number. But, on verification, it is seen that the pin code number is correct. Therefore, ultimately the impugned order of assessment was served on the petitioner in person on 14.08.2014. Therefore, the theory as propounded by the petitioner that the impugned order was antedated deserves to be rejected and accordingly rejected.

4.The petitioner has stated that he has submitted the objections on 28.05.2015 and acknowledged in the letter delivery book. Admittedly, the objection is after the impugned order and therefore, cannot be reckoned. Furthermore, the Assessing Officer has specifically stated that he has not received the objections. Therefore, this Court is not inclined to accept the case of the petitioner that they had submitted objections on 28.05.2015. However, considering the plea raised by the petitioner that he is a small time dealer and may be granted one more opportunity to approach the authority, this Court is of the view that to be entitled to such opportunity, the petitioner should be put on terms. Accordingly, the petitioner is directed to pay 15% of the tax demanded by the assessment order within a period of three weeks from the date of receipt of a copy of this order. If such payment is effected, then, the petitioner will be entitled to treat the impugned proceedings as a show cause notice, submit their objections within a period of two weeks therefrom, after which, the respondent shall afford an opportunity of personal hearing to the petitioner and proceed to finalise the assessment in accordance with law.

5.The Writ Petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Sgl

To

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

+1cc to Mr.K.Magesh, Advocate, S.R.No.41425
+1cc to the Special Government Pleader(T), S.R.No.40747

W.P.No.29909 of 2015

PA(CO)
CA(29/07/2016)