IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.30451 and 30452 of 2015 and

M.P.Nos.1 and 1 of 2015

M/s JF-SSS Furniture,
rep. By its Manager,
No.224/13, Nagai Road
Maharajapuram Melpathi
Vedaranyam Taluk - 614 810
Nagapattinam District ...Petitioner in both the Writ Petitions

Vs

The Commercial Tax Officer,
Thiruthuraipoondi ...Respondent in both the Writ Petitions

Prayer : Writ Petitions have been filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the records of the respondent in his impugned proceedings in TIN 33913882307/2010-2011; 2013 - 2014 respectively dated 28.07.2015 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.K.Shahul Hameed

For Respondent :Mr.Manokaransundaram
Additional Government Pleader

C O M M O N O R D E R

Heard the learned counsel appearing for the petitioner and learned Additional Government Pleader appearing for the respondent. With consent of either side, the Writ Petitions themselves are taken up for disposal.

2. The petitioner, who is a registered dealer under the provisions of TNVAT Act, 2006 on the file of the respondent has challenged the orders of assessment for the years 2010-2011 and 2013-2014.

3. Though the petitioner was issued a pre-revision notice dated 08.07.2015, they have failed to submit objections, which has resulted in assessments being finalised ex-party.

4. The short issue which falls for consideration is whether the petitioner is entitled to the benefit of Section 3(4) of the TNVAT Act.

5. The case of the petitioner is that Section 3(4) of the Act mentions that the purchase turnover should not be included in the sales turnover and if at all the sales turnover is within the time limit of Rs.50,00,000/-, the petitioner is entitled to the benefit as provided under Section 3(4) of the Act. Therefore, the petitioner would contend that the intestate purchase turnover cannot be a mitigating factor for determination of the turnover limit under provisions of Section 3(4) notwithstanding the fact that in the present case even otherwise, the taxable turnover is far below the threshold limited to Rs.50,00,000/-

6. Therefore, the petitioner would state that if an opportunity is granted to establish the above factual matrix, the issue could be sorted out.

7. It is seen that at the time when the Writ Petitions were entertained, a conditional order of stay was granted on 28.09.2015, which the petitioner has complied with.

8. Considering the facts and circumstances of the case, this Court is of the view that one more opportunity could be granted to the petitioner to place all facts before the respondent.

9. Accordingly, instead of setting aside the impugned orders, the petitioner is directed to treat the impugned order as show cause notice and submit their objections within a period of 15 days from the date of receipt of copy of this order. On objections being received, the respondent shall afford opportunity of personal hearing to the petitioner and proceed to redo the assessment in accordance with law. Since the petitioner has already paid 10% of the tax amount, no coercive steps shall be taken against the petitioner for recovery of the balance amount and it shall abide by the fresh orders to be passed by the respondent.

With the above directions, these Writ Petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer,
Thiruthuraipoondi

+1 cc to mr.K.Shahul, advocate,sr.42331.

skv(co)
krd 4/8

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