IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25135 of 2016 &
W.M.P.No.21533 of 2016

M/s.Ashok Timbers,
Rep. by its Partner D.Gopal,
1, Meenkarai Road,
Pollachi, Coimbatore District. .. Petitioner

Versus

The Assistant Commissioner (CT),
Pollachi Rural Circle,
Pollachi, Coimbatore District. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN No.33322280434/11-12, dated 01.07.2016 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.Manokaran Sundaram
Additional Government Pleader

O R D E R

Heard Mr.S.Ramanathan, learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader, accepting notice on behalf of respondents and perused the materials available on record, including the counter affidavit filed by the respondent.

2. The petitioner-Company, which is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as 'TNVAT Act'), has challenged the order of assessment passed by the respondent, dated 01.07.2016, for the year 2011-2012.

3. The impugned order has been challenged on two grounds stating that the respondent disbelieved the value of the goods as mentioned in the sale invoice which was submitted to the Authority after the inspection which was conducted by the Enforcement Wing Officials on 22.08.2011, stating that it is an afterthought and there is a huge difference in value as compared to the value recorded in Form JJ. This according to the petitioner should not have been done as there is no embargo for the petitioner to produce sale invoice and merely because, they produced the same after the Inspection by the Enforcement Wing Officials, is no ground to reject the petitioner's case, nor disbelieve the case of the petitioner. That apart, it is contended that the respondent treated the difference as a suppression of turnover for the equal addition and imposed penalty of 150% on the amount for equal addition which is illegal.

4. The second contention raised by the learned counsel for the petitioner is that the opportunity of personal hearing was not granted to the petitioner inspite of the same have been specifically sought for. From the counter affidavit, it is seen that the place of business of the petitioner was inspected by the Enforcement Wing Officials on 22.08.2011 and during the course of inspection, it was found that the Writ Petitioner had imported timber and sold the same by generating Form JJ and for such sales necessary sale invoices have not been raised at the time of inspection and there is a stock difference valued at Rs.50,010/- and the petitioner was not in a position to explain to the Enforcement Wing Officials with material evidence and they have been failed to appear before them in spite of summons had been issued.

5. With regard to non-affording an opportunity of personal hearing in paragraph No. 9 of the counter affidavit, it is submitted that the notice of proposal was issued by the predecessor of the respondent and if the dealer / petitioner had given objections, the respondent predecessor might have given the opportunity of personal hearing.

6. After hearing the parties and perusing the materials placed on record, it appears that the sale invoices have been raised after the inspection was conducted by the Enforcement Wing Officials. Therefore, the learned Additional Government Pleader is right in his submissions that but for the inspection conducted by the Enforcement Wing Officials, the above illegality would not have come to light. Nevertheless, the question would be as to whether the sale invoice raised by the

petitioner subsequently could have been rejected by the respondent? The answer to the same should be in the negative, since the respondent himself in the impugned proceedings has accepted that the value of the goods as mentioned in Form JJ is only an approximate value. Therefore, the respondent should have examined the matter after taking on record the sale invoices, then conduct an enquiry and then should have come to a conclusion, whether the plea raised by the petitioner is bona-fide or whether there is something wrong with the sale invoices issued or matters related and connected therefor. However such exercise was not done by the respondent as mere non-appearance of the petitioner before the Enforcement Wing Officials, would not put the dealer in a disadvantages position, at the behest of the Enforcement Wing Officials who submitted a report on the finding which came to light during the course of inspection. The right of the Assessing Officer has been clearly specified under the provisions of the Act and he is an independent Authority, exercising Statutory power. Therefore, the reasoning assigned in the impugned order cannot be sustained. However, this Court has not rendered any positive finding on the effect of the sale invoices, which should be considered by the respondent and should not be brushed-aside as done in the impugned order.

7. With regard to explanation given for not giving the personal hearing, the same is totally unacceptable. When there is a specific request made by the petitioner for grant of opportunity of personal hearing that should have been afforded to the petitioner and merely because the predecessor of the respondent had issued the proposal notice and the respondent had finalized the assessment can hardly be a ground to deny opportunity of personal hearing. That apart, the contention raised by the petitioner that treating the same the transaction which has been subsequently accounted for as suppression being against the decision of this Court in the case of Ram Sun Fabi Techs. Vs. State of Tamil Nadu reported in 28 VST 250 and the decision in the case of State of Tamil Nadu Vs. Punjab Crockery House Pvt. Ltd., should also be take into consideration. Though the petitioner did not file objections raising such contentions, and that being a legal plea, the respondent should consider the same.

8. In the light of the above, the impugned order of assessment calls for interference and the respondent should redo the assessment in accordance with law.

9. Accordingly, the Writ Petition is allowed and the impugned order is set-aside and the matter is remanded to the respondent for fresh consideration. The respondent shall redo the assessment, after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Pollachi Rural Circle,
Pollachi, Coimbatore District.

+1cc to Mr.S.Ramanathan, Advocate Sr.42060
+1cc to the Special Government Pleader Sr.42230

W.P.No.25135 of 2016 &
W.M.P.No.21533 of 2016

gj II[co]
srg 10/08/2016