BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:10.11.2016
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.A.(MD) No.1361 of 2016
and
C.M.P.(MD).No.9906 of 2016

Tvl.D.Savio Exports,
rep.by its Partner Thiru.L.Stanley Motha,
No.112, S.P.G.Kovil 4th Street,
Tuticorin-628 002 ... Appellant/Petitioner

Vs

1.The State of Tamil Nadu,
rep.by its Secretary to Government
Department of Commercial Taxes,
Fort.St.George, Beach Road,
Chennai-600 009.

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

3.The Assistant Commissioner-11,
C.T.Buildings, Beach Road,
Tuticorin. ... Respondents/Respondents

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 17.12.2015 made in W.P.(MD).No.22745 of 2015.

Prayer in WP(MD). 22745/ 2015 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records in his Proceedings issued in TIN No. 33455840990/2014-2015 dated 30.09.2015 received by the Petitioner on 20.10.2015, passed by the 3rd Respondent and quash the same and to direct the 3rd Respondent to provide the import documents available with the 3rd Respondent and to accord a personal hearing after issuing notice and then to pass fresh order if any for the assessment year 2013-2014.

For Appellant :Mr.M.MD.Ibrahim Ali for
Mr.A.S.Mujibur Rahman

For Respondents :Mr.R.Karthikeyan
Additional Government Pleader

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JUDGMENT

[Judgment of the Court was delivered by

M.SATHYANARAYANAN, J.]

By consent, this Writ Appeal is taken up for final disposal.

2. The petitioner is the appellant. He made a challenge to the assessment order dated 30.09.2015 by filing W.P(MD).No.22745 of 2015 and the said Writ Petition came to be dismissed on 17.12.2015 and hence this appeal.

3. The petitioner would state that it is a registered dealer under the Tamil Nadu Value Added Tax Act,2006 (in short 'the Act') and an assessee in the books of the third respondent and it is an importer of timber from other countries. It is the claim of the petitioner that since it is selling timber under Section 5(2) of the CST Act 56, they are not liable for taxation under the Act and the petitioner also sells the timber locally taxable @ 14.5% under the said provision. The petitioner would further state that for the year 2014-15, it imported timber from other countries valuing Rs.1,04,37,040/- for which it had filed their returns in Form I-1 as per the provisions laid down under TNVAT Act. The third respondent also declared the total turn over of Rs.59,71,825/- and paid tax of Rs.2,54,297/-. However, the third respondent had issued the pre-assessment notice dated 11.05.2015, indicating the taxable turn over of Rs.1,25,24,448/- and also proposed to levy penalty under Section 22(5) of the TNVAT Act. The petitioner in response to the pre-assessment notice dated 11.05.2015, has given representation, dated 10.07.2015 to the respondents, praying for time and however, it was not considered and the impugned order of assessment came to be passed.

4. Learned Counsel appearing for the appellant would submit that even as per the contents of the impugned order dated 13.09.2015 reliance has been placed on the alleged web-report as regards import from other countries for a turn over of Rs.1,04,37,040/- and admittedly, a copy of the web-report has not been furnished to the firm and in support of his submission, he has also placed reliance upon the judgment of the Division Bench of this Court, dated 29.09.2016 made in W.A.(MD).No.1323 of 2016. It is the further submission of the learned Counsel for the petitioner that as per Proviso to Section 27(4) of Act, no penalty shall be levied, without giving a reasonable opportunity of hearing and prays for interference.

5. *Per contra,* learned Government Advocate appearing for the respondent / revenue would submit that despite fair and reasonable opportunity has been afforded, the petitioner did not

avail the same and as such, it is not open to them to make a complaint in that regard and would further add that the learned Judge has also found the petitioner is also having an effective alternative remedy and therefore, he has to avail the same and prays for the dismissal of this Writ Appeal confirming the order of the dismissal of the Writ Petition.

6. This Court has paid its best attention and also heard the submissions made on either side and perused the materials available on records.

7. This Court while ordering ad-interim stay, the writ appellant was directed to deposit 25% of the amount pertaining to the tax alone, on or before 09.11.2016. It is represented that the said order has been complied with. A perusal of the impugned order of assessment dated 30.09.2015 passed by the third respondent would indicate that reliance has been placed upon the web-report and it is also the specific stand of the appellant / Writ Petitioner that in paragraph No.8 of the affidavit filed in support of the Writ Petition that the third respondent did not furnish the copy of the report to the appellant. That apart Circular No.7/2014, BB1/3589/2014, dated 03.02.2014, issued by the Office of the Principal Secretary, Commissioner of Commercial Taxes, Chepauk, Chennai, while dealing with the revision of assessment, it is made clear that no order of revision shall be done without affording of opportunity, as provided under Sections 22 and 25 of the Act and would submit that for revision of assessment, the following guidelines have to be followed. The relevant portion found in the said circular is usefully extracted below:-

> "b) Revision of Assessment
>
> Under the TNVAT Act,2006, the assessing officers usually issue orders to reverse the ITC on obvious reason. During the current financial year, the assessing officer may issue notice to reverse the ITC for each month separately under Section 25 of the TNVAT Act,2006. After closure of the financial year, the assessment should be completed initially under Deemed Assessment under Section 22 of the Act and then only they should take revision proceedings under Section 27 of the Act. Before passing revision order, the dealer should be given reasonable opportunity and personal hearing if required so as per Section 22(4) of the TNVAT Act, 2006. No order of revision should be made without affording an opportunity to the dealer as provided under Sections 22,25,27 of the Act."

8. In the light of the said circular coupled with the fact the order came to be passed without furnishing the copy of the web-report, this Court is of the considered view that the appellant/ petitioner need not avail alternative remedy. The third respondent has placed reliance upon the web-report, but, without furnishing a copy of the same to the appellant/petitiner and

arrived at the decision and passed the impugned order and therefore, on this short ground, the impugned order which was the subject matter of the Writ Petition warrants interference.

9. In the result, this Writ Appeal is allowed and the order dated 30.09.2015 passed by the third respondent as well as the order passed by the learned Judge in W.P(MD).No.22745 of 2015 are set aside and the matter is once again remanded to the third respondent who shall follow the above cited statutory provisions as well as the Circular and pass appropriate orders, on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order and communicate the decision taken to the appellant / Writ Petitioner, forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To:

1.The Secretary to Government
The State of Tamil Nadu,
Department of Commercial Taxes,
Fort.St.George, Beach Road,
Chennai-600 009.

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

3.The Assistant Commissioner-11,
C.T.Buildings, Beach Road,
Tuticorin.

+1 cc to Mr.A.S.Mujibur Rahman,Advocate, Sr.No:67795
+1cc to M/S Special Government Pleader, Sr No.67950

W.A(MD).No.1361 of 2016
10.11.2016

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