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.1412 of 2016
and C.M.P.(MD) No.10602 of 2016

M/s.Noor Timbers,
Rep. by its Partner,
H.Howdali @ Babu,
No.130, West Car Street,
Tirunelveli Town,
Tirunelveli. ... Appellant/Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Commercial Taxes Department,
Fort St. George,
Chennai - 600 009.
2.The Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk, Chennai - 600 005.
3.The Commercial Tax Officer,
Commercial Taxes Department,
Tirunelveli Town,
Tirunelveli. ... Respondents/Respondents

PRAYER: The Writ Appeals are filed under Clause 15 of the Letters Patent against the order dated 16.08.2016 made in W.P.(MD) No.14972 of 2016.

Prayer in WP(MD). 14972/ 2016 :

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 relating to the Assessment order in TIN 33205580343/2010-11, dated 30.05.2016 issued by the 3rd respondent quash the same and to direct the 3rd Respondent to pass Assessment under Section 22(2) and to accord a personal hearing.

For Appellant :Mr.M.MD.Ibrahim Ali
For Respondents :Mr.R.Karthikeyan
Additional Government Pleader

J U D G M E N T

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

By consent, this Writ Appeal is taken up for final disposal. Mr.R.Karthikeyan, learned Additional Government Pleader accepts notice on behalf of the respondents.

2.The deponent of the affidavit filed in support of the writ petition, claims to be the Managing Partner of the petitioner concern and according to him the partnership concern is a dealer in timbers. The 3rd respondent has already issued TIN number under the Tamil Nadu Value Added Tax Act and he is also an assessee on the file of the 3rd respondent and the concern used to file returns. In respect of the assessment year 2010-2011, the 3rd respondent also accepted the returns, however, has not passed any orders. The petitioner was issued with summons in Form-PP on 18.11.2015, calling upon them to produce 10 documents and in compliance of the same all the documents have been submitted. The petitioner would submit that to their shock and surprise, the third respondent has issued a notice on 25.02.2016, directing them to file objection and it could not be filed for the reason that the deponent, who is well-versed with the management/administration of the concern was suffering due to spinal card problem and took treatment from February to August, 2016 at Kerala and as such the said opportunity could not be availed. However, the 3rd respondent passed the impugned order dated 30.05.2016, stating among other things that despite notice dated 18.11.2015, calling upon him to produce the accounts, it has not been produced, so also the notice issued on 25.02.2016. Therefore, thought it fit to confirm the proposal and passed the Revision of Assessment Orders under Section 22(3) of TNVAT Act, 2006, giving the tax as Rs.88,121/-, including penalty, for which demand notice in Form 'RR' was issued. So, the petitioner made a challenge to the said order by filing W.P.(MD) No.14972 of 2016 and it was entertained and notices were ordered. Upon hearing rival submissions, the learned Judge held that despite opportunities being given, the petitioner did not avail the same and since no objection/reply has been submitted the third respondent was left with no option except to pass the impugned order and also held that the petitioner is having alternative remedy and dismissed the writ petition, giving liberty to the petitioner to file appeal before the appropriate forum. The writ petitioner/Assessee, aggrieved by the dismissal of the Writ Petition, filed this Writ Appeal.

3.Mr.M.Md.Ibrahim Ali, learned counsel appearing for the appellant/writ petitioner has drawn the attention of this Court to pre-amended provision of Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 and would submit that the said provision was substituted by Tamil Nadu Act 23 of 2012 with effect from 19.06.2012 and prior to substitution it reads as (4) If no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed and it was provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

4.It is the submission of the learned counsel for the appellant/writ petitioner that after the amendment, the said provision has been given a go by and would further submit that the Office of the Principal Secretary, Commissioner of Commercial Taxes has issued a circular in No.7/2014, BB1/3589/2014, dated 03.02.2014, which deals with revision of assessment and the mandate in the circular has not been followed before passing the order. Therefore, he prays for setting aside the impugned order as well as the order dismissing the writ petition with a direction to the third respondent to consider the issue afresh and to pass appropriate orders.

5.Per contra, learned Additional Government Pleader would submit that despite fair and reasonable opportunity was given to the appellant/assessee, they have failed to avail the same and the 3rd respondent has passed the assessment order strictly in accordance with law and the statute and would further submit that the learned Judge taken into account the availability of alternative remedy, dismissed the Writ Petition and prayed for dismissal of the Writ Appeal.

6.This Court paid its best attention to the rival submissions and perused the records carefully.

7.It is relevant to extract the relevant portion of Circular No.7/2014, BBL/3589/2014, dated 03.02.2014, issued by the Office of the Principal Secretary, Commissioner of Commercial Taxes, Chepauk, Chennai:

> "<u>b) Revision of Assessment</u>
>
> Under the TNVAT Act, 2006, the assessing officers usually issue orders to reverse the ITC on obvious reasons. 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.It is the specific stand of the petitioner that they have paid tax along with returns and only the admitted input tax was collected and since the Managing partner fallen sick and took treatment at Kerala between February to August, 2016, he could not appear and in the light of the statutory provisions issued in the above circular, opportunity has to be given.

9.A perusal of the impugned order, which was the subject matter of challenge, would disclose among other things that the mandate cast upon the circular and the above statutory provision has not been followed. Hence, on the short ground it calls interference.

10.At this juncture, the learned Additional Government Pleader would submit that since the demand has already been raised, the petitioner may be directed to deposit atleast 50% of the amount, as in the event of appeal being preferred the petitioner has to pre-deposit 25% amount and appellant has to make 25% for the purpose for considering the matter afresh.

11.In the result, the Writ Appeal is partly allowed and the order of this Court dated 16.08.2016, made in W.P.(MD) No.11025 of 2016 as well as the impugned assessment order in TIN 33205580343/2010-11 dated 30.05.2016, on the file of the 3rd respondent are set aside and the matter is remanded to the 3rd respondent for fresh adjudication and before doing so, the appellant/writ petitioner should deposit 25% of Rs.88,121/- before the 3rd respondent within a period of one week from the date of receipt of a copy of this order and on such remittance, the 3rd respondent is directed to consider the matter afresh in the light of the above circular and pass orders as expeditiously as possible within a period of 3 weeks therefrom and communicate the decision taken to the appellant/writ petitioner. No costs.

Sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To

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

2.The Commissioner of Commercial Taxes,Ezhilagam,
Chepauk, Chennai - 600 005.

3.The Commercial Tax Officer,Commercial Taxes Department,
Tirunelveli Town,Tirunelveli.

+1CC to M/S.Mr.Mohamed Ibrahim Ali,Advocate, SR.No. 67794

+1CC to the Special Government Pleader, SR.No. 68305

W.A.(MD) No. 1412 of 2016
10.11.2016

sj

AM/SS2/SAR-1/17.11.2016/4P/6C