BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)No.14972 of 2016
and
W.M.P(MD)No.11035 of 2016

M/s Noor Timbers
rep. by its Partner
H.Howdali @ Babu
No.130, West Car Street,
Thirunelveli Town,
Thirunelveli. ... 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,
Exhilagam,
Chepauk,
Chennai - 600 005.

3.The Commercial Tax Officer,
Commercial Taxes Department,
Thirunelveli Town,
Thirunelveli. ... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, 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 and then to pass fresh order for the assessment year 2010-2011.

For Petitioner : Mr.M.MD.Ibrahim Ali

For Respondents : Mr.R.Karthikeyan, AGP

ORDER

M/s Noor Timbers represented by its Proprietor Thiru H.Howdali @ Babu has challenged the impugned proceedings issued by the Commercial Tax Officer, Thirunelveli Town, Thirunelveli in TIN 33205580343/2010-11, dated 30.05.2016.

2.The petitioner is a registered dealer under TN VAT Act 2006 and also an assessee in the books of the 3rd respondent. The petitioner is a Dealer in Timbers. The petitioner submits the returns to the 3rd respondent as per the provisions laid down under 7(1)(a) of the TN VAT rules. While so, the 3rd respondent, the Commercial Tax Officer, Thirunelveli Town, Thirunelveli, has issued a summons on 18.11.2015, calling upon the petitioner to submit certain documents. The petitioner has also submitted all the records before the third respondent. But no acknowledgement was given by the third respondent. Thereafter, the third respondent has issued a notice on 25.02.2016 directing the petitioner to file objection. Though the said notice was received by the petitioner, he could not submit his reply in time, since he was sick from February ti August 2016. As a result, the third respondent passed the Assessment proceedings in TIN 33205580343/2010-11, dated 30.05.2016. Therefore, the petitioner is before this Court for the relief as stated supra.

3.Learned counsel appearing for the petitioner would submit that without making any assessment as per the provisions laid down under Section 22(2) of the Act and again without even giving personal hearing, the third respondent has passed the final assessment order. Therefore, the impugned order is liable to be set aside.

4.Adding further, the learned counsel for the petitioner would submit that neither any document was relied upon by the authority while passing the impugned order nor any connected papers were furnished to the petitioner. Therefore, the impugned order is liable to be set aside.

5.This Court is not able to follow the submission made by the learned counsel for the petitioner for the reason that when the Commercial Tax Officer, Thirunelveli Town, Thirunelveli, has issued notice on 25.02.2016 calling upon the petitioner to submit his objection, after receiving the same, the petitioner has to submit his objection. Since the petitioner has not given any objection/reply, the third respondent has no other option except to pass the present impugned order. The petitioner has not even sought for time to produce the document. Therefore, the petitioner has to file an appeal against the impugned order before the appropriate forum. Therefore, this Court, finding that the impugned order is an appealable nature, is not inclined to entertain the writ petition. Accordingly, this writ petition fails and the same is dismissed. However, a liberty is given to the petitioner to file an appeal before the appropriate forum, within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/
Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar

To

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

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

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

Copy to :

The Section Officer, ER Section (Writs),
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.Mohamed Ibrahim, Advocate in SR.No.45136.

+1cc to Special Government Pleader in SR.No.45367.

W.P.(MD)No.14972 of 2016
16.08.2016

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