BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.10.2016
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
W.P(MD)Nos.19201 to 19206 of 2016
and
W.M.P.(MD)Nos.13856 to 13861 of 2016

In W.P.(MD)No.19201 of 2016

M/s.R.K.P. Timbers & Traders,
Rep. by its Proprietor,
K.Palanikumaran,
No.19/1A, A.Y.A. Nadar Road,
East Gate, Thanjavur - 613 001. : Petitioner in all the WPs

Vs.

The Commercial Tax Officer,
Thanjavur - I Assessment Circle,
Thanajavur. : Respondent in all the WPs

Prayer in WP(MD). 19201/ 2016 : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in TIN No.33853803091/2010-2011, dated 12.08.2016 and quash the same as illegal, arbitrary and against the provisions of the Act and direct the respondent to conduct a detailed enquiry by summoning the alleged sellers and to grant an opportunity to cross examine the sellers for establishing that the petitioner had not effected such purchases and pass such further orders.

Prayer in WP(MD). 19202/ 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 of the Respondent in TIN No: 33853803091/2011-2012 dated 12.08.2016 and quash the same as illegal, arbitrary and against the provisions of the Act and direct the Respondent to conduct a detailed enquiry by summoning the alleged sellers and to grant an opportunity to cross examine the sellers for establishing that the petitioner had not effected such purchases.

Prayer in WP(MD). 19203/ 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 of the Respondent in TIN No: 33853803091/2012-2013 dated 12.08.2016 and quash the same as illegal, arbitrary and against the provisions of the Act and direct the Respondent to conduct a detailed enquiry by summoning the alleged sellers and to grant an opportunity to cross examine the sellers for establishing that the petitioner had not effected such purchases.

Prayer in WP(MD). 19204/ 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 of the Respondent in TIN No.33853803091/2013-2014 dated 12.08.2016 and quash the same as illegal, arbitrary and against the provisions of the Act and direct the Respondent to conduct a detailed enquiry by summoning the alleged sellers and to grant an opportunity to cross examine the sellers for establishing that the petitioner has not effect such purchases.

Prayer in WP(MD). 19205/ 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 of the Respondent in TIN No: 33853803091/2014-2015 dated 12.08.2016 and quash the same as illegal, arbitrary and against the provisions of the Act and direct the Respondent to conduct a detailed enquiry by summoning the alleged sellers and to grant an opportunity to cross examine the sellers for establishing that the petitioner had not effected such purchases.

Prayer in WP(MD). 19206/ 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 of the Respondent in TIN No: 33853803091/2015-2016 dated 12.08.2016 and quash the same as illegal, arbitrary and against the provisions of the Act and direct the Respondent to conduct a detailed enquiry by summoning the alleged sellers and to grant an opportunity to cross examine the sellers for establishing that the petitioner had not effected such purchases.

For Petitioner : Mr.K.Soundararajan in all WPs

For Respondent : Mr.R.Karthikeyan
Addl. Govt. Pleader in all WPs

C O M M O N O R D E R

These Writ Petitions have been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in TIN Nos.33853803091/2010-2011, 33853803091 / 2011-2012, 33853803091 / 2012-2013, 33853803091/2013-2014, 33853803091/2014-2015, 33853803091/2015-2016 dated 12.08.2016 and quash the same as illegal, arbitrary and against the provisions of the Act and direct the respondent to conduct a detailed enquiry by summoning the alleged sellers and to grant an opportunity to cross examine the sellers for establishing that the petitioner had not effected such purchases and pass such further orders.

2.Heard, Mr.K.Soundararajan, learned counsel appearing for the petitioner and Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondent.

3. Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondent. By consent, all the Writ petitions are taken up for final disposal, since all the Writ petitions are filed by the same petitioner for different years of assessment.

4. The petitioner is a dealer in Timber and Hardware items and registered dealer under Tamil Nadu Value Added Tax Act 2006. The petitioner is an assessee on the file of the respondent herein. During the assessment years 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016, the petitioner filed his annul returns in Form – I-1 and reported a total and taxable turnover of Rs.7,77,836/-, Rs.9,36,913/-, Rs.1,31,82,013/-, Rs.1,81,61,890/-, Rs.87,23,515/- and Rs.1,18,91,090/- respectively. The respondent accepted the returns and a deemed assessment to that effect was made on 01.06.2012 in which no tax liability has been raised.

5. The case of the petitioner is that there was an inspection conducted by the Enforcement Wing Officers on 19.11.2015 and during the course of inspection, they had verified the Form-I-1 and they compared the purchases declared by the petitioner with that of other dealers' Annexure-II through the Department Web Site and came to the conclusion that the petitioner herein had effected taxable purchases of Rs.18,81,391/-, Rs.35,53,952/-, Rs.10,37,046/-, Rs.18,14,183/-, Rs.15,23,865/- and Rs.3,56,974/- respectively. The petitioner has also stated that the Enforcement Wing Officers had treated the said purchases as suppression and estimated the sales at Rs.21,06,972/- taxable at 12.5%, Rs.39,99,575/- taxable at variable rates, Rs.11,57,240/- taxable at 14.5%, Rs.19,29,746/- taxable at various rates, Rs.16,20,935/- taxable at 14.5% and Rs.1,68,400/- respectively. The said proposals were sent to the respondent for implementing the same. The respondent in his Notices in TIN No.33853803091/ 2010 - 2011, 33853803091 / 2011-2012, 33853803091/2012-2013,33853803091/2013-2014 33853803091/2014-2015 and 33853803091/2015-2016 dated 11.07.2016 had estimated the tax due at Rs.2,63,372/-, Rs.5,58,481/-, Rs.1,67,800/-, 1,67,800/-, Rs.2,35,036/- and Rs.51,990/- respectively and prepared to impose a penalty at 150% of the tax due under Sections 27(3) and 22(5) of the TN VAT Act.

6. On 12.08.2016, the present impugned order has been passed by the respondent stating that the surprise inspection was conducted in the petitioner's place of business by the Enforcement Officers on 19.11.2015 and defects were noticed and notices were issued to the petitioner. But the petitioner has not chosen to file his objections. Hence, the final order has

been passed on 12.08.2016.

7. The case of the petitioner is that though the notice was issued to the petitioner on 19.11.2015 calling for the petitioner's objections, but the petitioner has not filed his objections and without taking into consideration, the respondent passed the impugned order. Therefore, the petitioner sought for one more opportunity to file their objections and also to conduct an enquiry. Further, the petitioner relying on the Judgment in *2004-05(10) TNCTJ, (M.Krishnaswamy Vs. TNTST and others)*, to establish his case. In the said Judgment, paragraph Nos.2 and 3 are relevant and the same is referred as follows:-

> " *2. Learned counsel for the petitioner sought to argue the matter originally as against the order passed by the Tribunal. However, he has also taken as through the assessment order and contended that the entire assessment is best judgment assessment dehorse production of any records of the petitioner. He contended that the petitioner was not able to attend the assessing officer because of his heart ailment. He further submitted that the penalty component is much more than the tax component. He pointed out that the penalty component is about 150% over and above the tax component.*
>
> *3. We have heard the learned Special Government Pleader(Taxes). On a perusal of the assessment order, we are of the view that the assessment order has been made only on surmises and conjunctures and not based on the books of accounts and the penalty is also levied more than 150% of the tax component. Therefore, in the interest of justice, we are of the view that the petitioner has to be given one more opportunity to produce the accounts before the assessing officer so as to have a fair deal in the framing of assessment. Hence, the assessment order dated 02.03.2000 in both the cases are set aside and the*

> *petitioner, is hereby directed to appear before the assessing officer along with all the records pertaining to the assessment years on 18th October, 2004. The assessing officer is directed to proceed further and finalise the assessment in accordance with the provisions of the Act. If the petitioner is not co-operating with the assessing officer as directed above, it is open to the assessing officer to proceed further in the manner known to law."*

8. Recording the said submissions, I am inclined to set aside the impugned order dated 12.08.2016 and the matter is remitted back to the respondent and the respondent is directed to conduct a detailed enquiry by summoning the sellers and to grant an opportunity to cross examine the sellers for establishing that the petitioner had not effected such purchases. The said exercise will be completed within a period of three months from the date of receipt of a copy of this order. If the petitioner is not co-operating with the assessing officer as directed above, it is open to the assessing officer to proceed further in the manner known to law.

9. The Writ petitions are allowed on the above terms. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The Commercial Tax Officer,
Thanjavur - I Assessment Circle,
Thanajavur.
+1cc to Mr.K.Soundararajan, Advocate in SR No.60199
+1cc to the Spl.Govt.Pleader in SR No.60575

ORDER MADE IN
W.P(MD)Nos.19201 to 19206 of 2016
and
W.M.P.(MD)Nos.13856 to 13861 of 2016
06.10.2016

PMU
ANR/SS3/SAR3/04.11.2016/5P/4C