IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.31815 of 2017
and WMP.Nos.34959 and 34960 of 2017

Tvl.Nilgiri Furniture World
Rep. By its Proprietor
6/1-B, Pillaiyar Koil Street
Gudalur-643 212 ..Petitioner

-Vs-

1.The State Tax Officer
Gudalur
Nilgiris-643 212

2.Bank of India
Perur Branch
56, Siruvani Main Road
Perur, Coimbatore-641 010 ..Respondents

Prayer:- Writ Petition filed praying to issue a writ of Certiorari calling for the records of the 1st respondent in TIN No.33192581157/2015-16 dated 19.09.2017 and quash the same.

For petitioner : Mr.Adithya Reddy

For respondents : Mrs.Narmadha Sampath, Spl.Govt.Pleader.

ORDER

Heard Mr.Adithya Reddy, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader, accepting notice on behalf of the respondents. With the consent of learned counsel appearing on either side, these Writ Petition is taken up for final disposal.

2. The 1st respondent issued notices dated 11.04.2017 alleging that the petitioner has not disclosed the purchase effected in 429 transactions for a total purchase value of Rs.1,79,96,970/- and proposing to levy tax of Rs.22,39,366/-. The Petitioner on receiving notices, which contains list of purchase omissions submitted his objections and filed details. The 1st respondent has considered the details furnished by the

Petitioner and found that in respect of 112 transactions, the petitioner was unable to explain and thereby, completed the assessment and levied tax by order dated 19.09.2017. Apart from levying tax on the purchase suppression of Rs.39,59,339/-, the respondent has added 10% of Freight, 50% towards Manufacturing cost and 10% as Gross Profit.

3. The learned counsel for the petitioner would contend that the presumption that there has been purchase suppression in respect of 112 transactions itself is baseless. However, if the petitioner had been granted some more time, they would have reconciled and established that those transactions were duly disclosed or that they are work in progress etc. With regard to addition of 10% Freight, 50% Manufacturing cost and 10% towards Gross Profit, the petitioner has been denied opportunity to put forth their objections as there was no such proposal in the show cause notice dated 11.04.2017.

4. After hearing the learned counsel on either side and on a careful perusal of the materials placed on record, I find that the notice dated 11.04.2017 does not contain proposal to estimate the Petitioner's sales turnover on the basis of alleged purchase suppression in respect of 112 transactions, which has been noted by the Assessing Officer, for which, the petitioner is made liable to pay tax and penalty. With regard to three additions viz., Freight, Manufacturing cost and Gross Profit, the petitioner did not have any opportunity to submit their objections as there was no proposal to the said effect in the show cause notice dated 11.04.2017. Thus to the said extent, there has been violation of principles of natural justice.

5. In the light of the above facts, this court is inclined to dispose of the Writ Petition with the following directions so as to safeguard the interest of revenue and to afford an opportunity to the petitioner.

(i) The petitioner is directed to pay the tax on the alleged purchase suppression of Rs.39,59,339/- within a period of three weeks from the date of receipt of a copy of this order.

(ii) With regard to additions towards Freight at 10%, Manufacturing cost at 50% and Gross Profit at 10%, the petitioner is granted liberty to treat the impugned order as show cause notice and submit their objections within a period of 15 days from the date of receipt of a copy of this order.

(iii) The 1st Respondent, on receipt of the objections, shall afford an opportunity of personal hearing to the Petitioner, in order to reconcile the issue of additions in respect of those three heads viz., Freight at 10%, Manufacturing cost at 50% and Gross Profit at 10%.

(iv) If the petitioner is in possession of certain documents, it is open to them to properly explain before the 1st respondent, in respect of 112 transactions or any part there of. It is also open to the petitioner to approach the 1st Respondent under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, who in turn shall consider the same in accordance with law.

(v) In the light of the above observation, the Recovery Notice dated 01.12.2017 shall be kept in abeyance and attachment of the Petitioner's Bank Account shall be lifted.

The Writ Petition is disposed of on the above terms. No costs. Consequently, connected WMPs are closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

nvsri

To
1.The State Tax Officer
Gudalur
Nilgiris-643 212

2.Bank of India
Perur Branch
56, Siruvani Main Road
Perur, Coimbatore-641 010.

+1 CC to Spl. Govt. Pleader sr 87942.
+1cc to Mr.Adithya Reddy, Advocate SR.No.87750

Writ Petition No.31815 of 2017

SP(15/12/2017)