In the High Court of Judicature at Madras

Dated: 15.02.2017

Coram

The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.3694 of 2017

and WMP No.3740 of 2017

M/s.Sri Rajakumaran Timber,
rep. by its Proprietor,
No.121/21, 1st Floor, PJN Road,
Villupuram. .... Petitioner

Vs

The Assistant Commissioner (CT)(FAC)
Villupuram -II Asst. Cricle,
27/11, VOC Street, First Floor,
Villupuram - 605 602. .... Respondent

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of mandamus directing the respondent to consider the petition dated 04.01.2017 filed under Section 84 of the TNVAT Act, 2006 and rectify the error apparent on the face of the order in TIN No.33704702024/2013-14 dated 31.03.2016 by deleting the estimated turnover and pass revised order in accordance with law.

For Petitioner : Ms.C.Rekha Kumari
For Respondents : Mr.K.Venkatesh, G.A.

O R D E R

1. Issue notice. Mr.K.Venkatesh, accepts notice on behalf of the respondent.

1.1. With the consent of counsels for parties, the Writ Petition is taken up for final hearing and disposal.

2. The only direction that the petitioner seeks in the instant Writ Petition is to consider its petition, filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short 'the 2006 Act'). The said petition, which is dated 04.01.2017, apparently, was received by the respondent on the same day.

3. The petitioner's grievance emerges from the observation made in the assessment order dated 31.03.2016, (which pertains to Assessment Year (A.Y.) 2013-2014), by the respondent, whereby, he has reached a conclusion that there has been a

suppression of sales based on the reasoning that two purchase invoices were excluded from the monthly returns filed by the petitioner. The details of these invoices as noted in the assessment order are as follows:

S.No	Name and TIN No. of the dealer	Invoice No. & Date	Purchase Value (Rs.)	Rate of Tax	Tax paid
1	Thirumalai Timbers 33455701989	758/31.7.13	1201998	14.5%	174290
2	Andaman Timber Company	5299/31.7.13	542131	14.5%	75999
		Total	1726129		250289

3.1. A perusal of the assessment order would show that the purchase value of the aforementioned invoices is a sum of Rs.17,26,129/-. To this amount, tax equivalent to Rs.2,50,289/- has been added. Thus, according to the respondent, the purchase turnover not accounted for, is a sum of Rs.19,76,418/-.

3.2. Furthermore, a perusal of the assessment order would show that the respondent has quantified the amount of suppressed sales by adding on to the aforementioned unaccounted purchase turnover, freight charges and gross profit at the rate of 2% and 10% respectively. The cumulative figure of unaccounted purchase is, thus, been pegged at Rs.22,17,541/-

3.3. In addition to the above, an equivalent amount has been added as estimated suppression. Thus, the respondent has concluded that there has been a total sales suppression, equivalent to Rs.44,35,082/-.

4. Ms.Rekha Kumari, who appears for the petitioner, says that in the petition filed under Section 84 of the 2006 Act, it has been pointed out that while in the purchase turnover return filed for the month of July, 2013, the aforementioned invoices have been included, inadvertently, the reference to the said invoices was left out in Annexure I. According to the learned counsel for the petitioner, the entire edifice of the assessment order is based on this erroneous conclusion, which proceeds on a mistake of fact.

5. As indicated above, the petition under Section 84 is pending and has not been disposed of.

6. Mr.Venkatesh, who appears for the respondent, says that pre-assessment notice was issued, to which, the petitioner did not respond and, therefore, the petitioner is responsible, in a sense, in the conclusion which has been reached by the respondent, in the assessment order.

7. To be noted, notwithstanding the conclusion reached in the assessment order, I have asked Mr.Venkatesh, how is that the respondent has included an estimated amount towards sale suppression without any material on record.

7.1. Mr. Venkatesh says that since, it is only an estimate, there is no yardstick for the same, either in the Act or otherwise.

7.2. Prima facie, I find it difficult to accept the stand taken by Mr.Venkatesh. However, this aspect of the matter will be dealt with, if necessary, after compliance is made by the respondent of the directions issued hereafter.

8. Therefore, having regard to the aforesaid circumstances, I am inclined to allow the Writ Petition and direct the respondent to consider the petition filed by the petitioner under Section 84 of the 2006 Act.

8.1. The needful will be done by the respondent within a period of four (4) weeks from the date of receipt of a copy of the order.

8.2. In the interregnum, no coercive measures will be taken by the respondent against the petitioner.

8.3. Needless to say, the respondent, before passing any order on the petition filed under Section 84 of the 2006 Act, will afford a personal hearing to the petitioner.

9. The Writ Petition is disposed of in terms of the aforementioned directions.

10. Resultantly, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

sd/
Assistant Registrar(CS VIII)

/true copy/

Sub Assistant Registrar

sl

To

The Assistant Commissioner (CT)(FAC)
Villupuram -II Asst. Cricle,
27/11, VOC Street, First Floor,
Villupuram - 605 602.

+1cc to Special Government Pleader SR.No.9951
+1cc to M/s.C.Rekha Kumari, Advocate SR.No.9843

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PPA(CO)
GN(09/03/2017)