IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.635 to 641 of 2018
and
W.M.P. Nos.792 of 2017 to 798 of 2018

M/s.Sathish Timber and Saw Mill,
Rep. By its Proprietrix R.Sudha,
Rep. By her Power Agent,
Mrs.R.Neela,
Poompuhar Main Road,
Senthangudi,
Mayiladuthurai,
Nagapattinam District ...
Petitioner in all WPs

Vs.

The Commercial Tax Officer (FAC),
Mayiladuthurai – II Assessment Circle,
Mayiladuthurai, Nagapattinam District
... Respondent in all WPs

Common Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, call for the records of the Respondent in TIN No.33164061830/2009-2010 dated 13.03.2017 (in WP No.635 of 2018), TIN No.33164061830/2010-11 dated 13.03.2017 (in WP No.636 of 2018), TIN No.33164061830/2011-12 dated 13.03.2017 (in WP No.637 of 2018), TIN No.33164061830/2012-13 dated 13.03.2017 (in WP No.638 of 2018), TIN No.33164061830/2013-14 dated 13.03.2017 (in WP No.639 of 2018), TIN No.33164061830/2014-15 dated 13.03.2017 (in WP No.640 of 2018), TIN No.33164061830/2015-16 dated 13.03.2017 (in WP No.641 of 2018), which was received on 22.12.2017 and quash the same.

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For Petitioner : Mr. K.Soundararajan (in all Wps)

For Respondent : Ms.G.Dhanamadhri
Government Advocate (Taxes)

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O R D E R

Heard Mr. K.Soundararajan, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate (Taxes) appearing on behalf of the respondent. Since the issue involved in this writ petition lies in a very narrow campus and the respondent has given instructions to the learned Government Advocate (Taxes), the writ petitions are taken up for disposal.

2.The petitioner in these writ petitions is a dealer in Timber and also having a Saw Mill and was registered under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956, as an assessee on the file of the respondent. The petitioner is aggrieved by the impugned order for the assessment years from 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016, which is purported to have been issued based on an inspection alleged to have been conducted in the place of business of the petitioner.

3.The learned counsel for the petitioner challenges the impugned proceedings on the following grounds.

(1)Pre revision notice dated 13.02.2017 was not served on the petitioner and therefore, the impugned assessment order is in violation of principles of natural justice.

(2)It is contended that the impugned re-assessment has been done based upon the letter sent by one M/s.Ali Timbers in Kerala State, which was forwarded by the Principal Secretary and Commissioner of Commercial Taxes, Chennai to the Joint Commissioner (Enforcement), Trichy and without conducting any enquiry and without summoning the complainant from the State of Kerala, straight away action has been initiated.

(3)It is contended that the petitioner had closed down the business on 01.09.2014 and intimated the same to the respondent/department, which was accepted by the respondent in the impugned assessment order passed in the assessment year 2015-16. That apart, the business premises of the petitioner was sealed by the Forest Department on 07.01.2014 and the question of inspecting the sealed business premises does not arise.

(4)It is contended that in the impugned order for the assessment year 2015-2016 the respondent has stated that the defects noticed by the Inspecting Officer have not been admitted by the Proprietrix Tmt.R.Sudha, it is submitted that the Proprietrix Tmt.R.Sudha, had shifted to Ireland and to prove the same a copy of the Passport has been produced.

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4.The learned Government Advocate (Taxes) appearing on behalf of the respondent on instructions from the respondent, would submit that the notice dated 13.02.2017 was received by a person on behalf of the petitioner, to prove the same, she has produced a copy of the acknowledgement, bearing the signature of the person and this is stated to be the signature of the dealer. Therefore, it is submitted that the petitioner had notice of the proceedings being initiated against her and therefore, there is no violation of principles of natural justice. Further, it is submitted that if the petitioner had responded to the notice and produced records before the Assessing Officer then the adjudication could have been done by the Assessing Officer and since the petitioner did not do so, the respondent was justified in completing the assessment in the manner done.

5.After hearing the learned counsel appearing for the parties and perusing the materials placed on record, it is seen that there is no document produced by the Department to show that despite the business premises having been sealed by the Forest Department still he was carrying on business. If the petitioner had been carrying on business it would have been illegal, since the seal of the premises cannot be opened without express orders and permission from the Forest Department. Therefore, the question of inspecting the sealed premises that too on 09.04.2015 is impossible. Therefore, I am satisfied that the Enforcement wing could not have conducted a surprise inspection on 09.04.2015. That apart, from the passport of Tmt.R.Sudha it is seen that at the relevant point of time she was not in India. Therefore, she could not have given any submission before the Enforcement Officer. The entire re-assesment is a result of the complaint given by M/s.Ali Timbers, Nadukkunnu, Pathanapuram, Kerala State. If there was a complaint against the petitioner then the Joint Commissioner (Enforcement) should have conducted the enquiry, summoned the dealer as to what basis he had lodged the complaint and only thereafter, action could have been initiated. That apart when the information furnished by the third party dealer, who is not registered in the state of Tamil Nadu is relied upon, the petitioner should have been given an opportunity to rebut the said contentions and such opportunity shall also include an opportunity of cross examination of the said complainant. This procedure was not adopted before the action was initiated by the respondent/department.

6.Thus, I find the entire proceedings initiated by the respondent are thoroughly flawed for serious procedural infirmities and for that reason, the impugned order is liable for interference.

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7.For the above reason, the writ petitions are allowed and the impugned assessment orders are quashed. It is left open to the respondent/department to proceed in accordance with law, if there are any materials available and if they choose to do so, they should bear in mind the observation made supra in this regard and notice should be sent to the residential address of the petitioner. No costs. Consequently, connected miscellaneous petition are closed.

rka/maya

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner (CT)
Chennai (North) Division
Station: III Floor, PAP JM Buildings
No.1, Greams Road, Chennai - 600 006.

2.The Commercial Tax Officer
Roving Squad-IV, Enforcement (North)
Greams Road, Chennai - 600 006.

3.The Commercial Tax Officer (FAC),
Mayiladuthurai - II Assessment Circle,
Mayiladuthurai, Nagapattinam District

+1cc to Mr.Soudarajan, Advoate Sr.No.6746
+1cc to Special Government Pleader Sr.No.7023

MG(CO)
sm:22.2.2018

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