In the High Court of Judicature at Madras

Dated : 19.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.1170 of 2018 & WMP.No.1456 of 2018

M/s.The Western India Plywoods
Ltd., rep.by its Authorized Signatory ...Petitioner

Vs

1.The Assistant Commissioner (CT),
Choolai Assessment Circle,
Chennai-8.

2.The Commercial Tax Officer/BTPS,
Central Enforcement Wing-I,
Chennai-6.

3.The Assistant Commissioner (CT),
CEW-I, Enforcement-I, Chennai-6. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings in TIN No.33620500028/2016-17 dated 13.12.2017, quash the order passed therein and direct the first respondent to pass fresh orders after giving the details of informations received from the second respondent in VSI-3/07 2017-18/BTPS/CEW-I dated 06.12.2017 and pass fresh orders after providing an opportunity of personal hearing as required under Section 22(4) of TANVAT Act and work out the stock difference independently not being influenced by the second respondent by the application of mind in this case.

For Petitioner : Mr.C.Bakthasiromani

For Respondents : Mr.M.Hariharan, AGP

ORDER

Mr.M.Hariharan, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has filed this writ petition challenging the impugned order dated 13.12.2017 passed under the said Act for the assessment year 2016-17.

3. The first ground, on which, the impugned order has been challenged, is by contending that it is in violation of the principles of natural justice.

4. On a perusal of the impugned assessment order, it is seen that after the petitioner filed their objections dated 17.10.2017, the Assessing Officer addressed to the third respondent on 10.11.2017 presumably requesting him to furnish certain details regarding stock variation pertaining to the petitioner. However, the petitioner was not informed about the said communication dated 10.11.2017 and in response to the same, the third respondent, by letter dated 06.12.2017, furnished 42 pages of stock details, which were stated to be furnished by the petitioner at the time of inspection. However, without affording another opportunity to the petitioner, the first respondent completed the assessment largely based upon the details, which he secured from the third respondent after the petitioner filed their objections dated 17.10.2017.

5. It is submitted by the learned counsel for the petitioner that though on 30.3.2017, personal hearing was fixed, it appears that the first respondent had gone for GST training and that therefore, he was not there in the office. Even subsequently, no date was fixed for hearing, but the impugned order has been passed.

6. If the first respondent proposes to rely upon any documents, which he received from the third respondent and even if the documents were obtained by the officials of the Enforcement Wing from the petitioner during inspection, the first respondent, being the Assessing Officer, has a duty to furnish copies of the same to the petitioner and afford an opportunity to put forth their objections. The manner, in which, the assessment has been completed, is incorrect and will not stand to scrutiny of law. This is sufficient to set aside the impugned order.

7. For the above reason, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent for a fresh consideration. The first respondent shall furnish copies of documents, which he received from the third respondent, grant 15 days' time to the petitioner to submit their further objections, afford an opportunity of

personal hearing to the petitioner and redo the assessment in accordance with law. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (CT), Choolai Assessment Circle, Chennai-8.

2.The Commercial Tax Officer/BTPS, Central Enforcement Wing-I, Chennai-6.

3.The Assistant Commissioner (CT), CEW-I, Enforcement-I, Chennai-6.

+1cc to Mr.C.BakthaSiromani, Advocate, S.R.No.4671

+1cc to the Spl.Government Pleader, S.R.No.4928

WP.No.1170 of 2018&
WMP.No.1456 of 2018

KGK(CO)
RRK(06/02/2018)