

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.01.2018

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31844 of 2013
and MP.Nos.1 and 2 of 2013

N.Sakthivel,
Proprietor of M/s.Sri Amman Timber Depot,
Rep.by its Legal Representative - N.Jothi,
No.45, Jeevanandham Road,
Kollampalayam, Erode - 638 002. Petitioner

Vs.

The Assistant Commissioner (CT),
Erode (Rural) Circle,
Erode. Respondent

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorari,
calling for the impugned proceedings of the respondent in TIN
33442902332/08-09 dated 18.10.2013, quash the same as illegal
and violative of the principles of natural justice as provided
under Section 22(4) of the TNVAT Act, 2006.

For Petitioner : Mr.S.Rajasekar

For Respondent : M/s.G.Dhanamadhri

Government Advocate

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O R D E R

Heard Mr.S.Rajasekar, learned counsel for the petitioner
and M/s.G.Dhanamadhri, learned Government Advocate for the
respondent.

2.The petitioner is before this Court, challenging the assessment order passed by the respondent dated 18.10.2013. Earlier the petitioner had approached this Court praying for a direction upon the respondent to furnish certain details to enable the petitioner to submit objections to the allegation made against the petitioner that during the relevant assessment year 2008-2009, they had effected import of timber and cleared the same without payment of tax. The writ petition in W.P.No.15986 of 2013 was disposed of by an order dated 27.06.2013 by directing the respondent to consider the petitioner's representation dated 02.04.2013, wherein the petitioner had requested copies of several documents. On receipt of the directions, the respondent enclosed the information received by them from the Deputy Accountant General/S.R.A dated 19.04.2012, which contains an annexure. The annexure shows that the import transactions done by the petitioner from 2007 onwards. According to the petitioner except for the transaction in 2008-2009, all other transactions have been duly accounted for and taxes have been paid. On receipt of the above information, the petitioner was granted one month time to submit their objections. The petitioner submitted a representation requesting further time stating that they are unable to trace the records. Even that one month time lapsed on 26.09.2013 and the petitioner did not file any objections and hence, proceeded to complete the assessment.

3.The learned counsel for the petitioner would submit that since revision of assessment is under Section 22(4) of the Act, even though the petitioner has not submitted their objections an opportunity of personal hearing ought to have been provided. In this regard, reliance was placed on the decision reported in the case of M/s.Rajam Offset Printers vs. The Commercial Tax Officer reported in 1995 (8) MTCR 55 and to enable the petitioner to have the benefit of the decision in the case of M/s.Rajam Offset Printers, the conduct of the petitioner has to be considered. When, the respondent issued notice dated 28.02.2013, the petitioner made a representation dated 02.04.2013, requesting for 15 documents/details. Complaining that the said representation has not been considered, the petitioner approached this Court and filed a writ petition to direct the respondents to consider the representation giving all the documents/details. The Court did not issue any positive direction but directed the representation to be disposed of on merits. Pursuant thereto, the respondent has given the details along with notice dated 08.08.2013. On perusal of the said letter along with the enclosures, it is seen that the petitioner

has been a regular importer of timber from abroad. Therefore, the petitioner would state that they have not done any transaction during 2008-2009 and the onus lies on the petitioner to prove the same and the respondent cannot be directed to prove the negative. In spite of the petitioner having not submitted their objections in time, the respondent granted further time and waited for nearly seven months and in spite of the same, the petitioner did not bother to respond to the notice nor submitted any objections. Since the petitioner failed to prove the genuineness of the stand taken by them, the respondent has completed the assessment and passed the impugned order. The respondent cannot be blamed for having completed the assessment in the manner done.

4. Thus, considering the conduct of the petitioner in dragging the matter without offering proper explanation, I am of the view that the instant case is not a case where there is violation of principles of natural justice or violation of provisions under Section 22(4) of the Act, but it is the case where the petitioner failed to avail the opportunity granted to them. Therefore, on facts the decision in the case of M/s. Rajam Offset Printers cannot be made applicable to the case on hand. However, considering the plea raised by the petitioner stating that her husband N. Sakthivel, who was the Proprietor of the petitioner Company is suffering ailments and unable to even submit objections, this Court is inclined to grant of one opportunity to the petitioner to submit all records in support of their stand that no import transactions were effected by them. The learned counsel for the petitioner submitted that the details given by the respondent along with the notice dated 08.08.2013 is insufficient. I do not agree with the said submission that the details is in the tabulated form which gives the bill of entry number, date of bill of entry, type, pan number, importers name and address, city of import, type of timber imported, assessable value, the duty paid thereon, name of the supplier and the port of loading. Thus, all relevant details were available in the annexure. Therefore, the petitioner should submit a proper reply duly supported by records. However, only one opportunity will be given to the petitioner, failing which, the respondent can proceed to recover the tax as quantified in the impugned order.

5. Accordingly, the writ petition is disposed of by directing the petitioner to treat the impugned proceedings as show cause notice and submit a full fledged reply along with supportive documents within a period of thirty days from the date of receipt of a copy of this order. If the petitioner fails to comply with the direction, then the respondent is

entitled to proceed further pursuant to the impugned order. If, on the other hand, the petitioner complies with the direction and submitted objections along with required documents, the respondent shall consider the same on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Assistant Registrar

Dt.25.1.18

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Sub Assistant Registrar

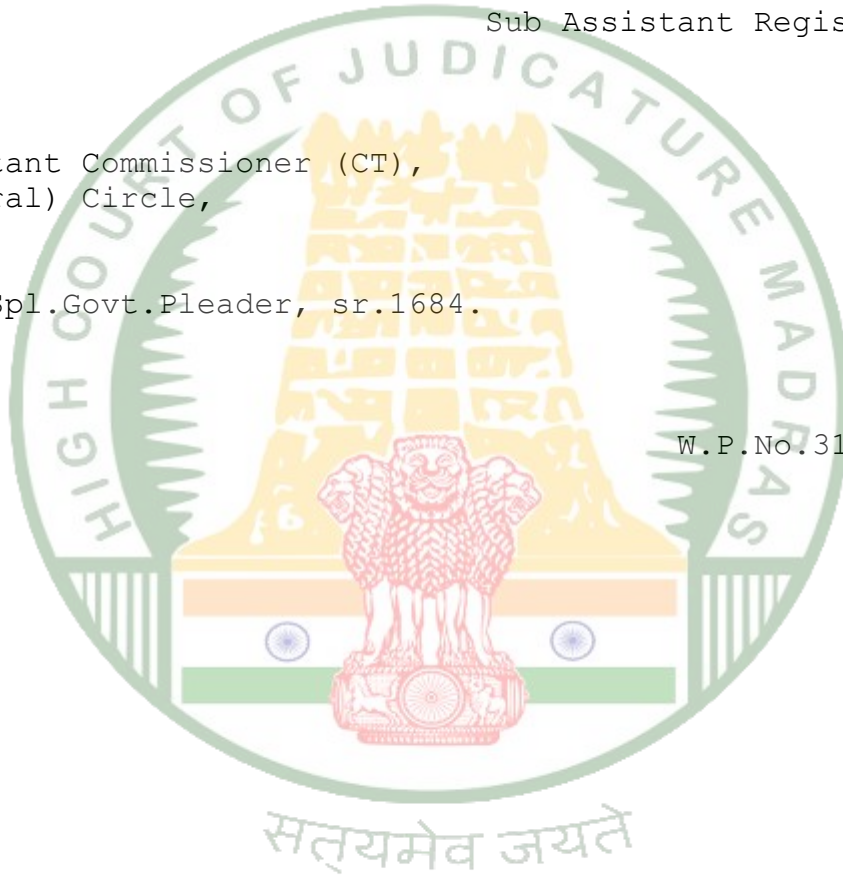
To

The Assistant Commissioner (CT),
Erode (Rural) Circle,
Erode.

+1 cc to Spl.Govt.Pleader, sr.1684.

Sr(co)
krd 2/2

W.P.No.31844 of 2013



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