BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.02.2018
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P. (MD) No. 3493 of 2018
and
W.M.P(MD)No.3623 of 2018

Tvl.Sree Bhagavan Enterprises,
Represented by its Proprietrix,
R.Manjula, .. Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Assistant Commissioner (ST)-V,
Dindigul V Assessment Circle,
Commercial Taxes Office,
Sub-Collector Office Road,
Dindigul-624 001. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN No.33045380708/2010-11, dated 09.01.2017 and quash the same.

For petitioner : Mr.B.Rooban
For respondents : Mrs.Srimathy
Special Government Pleader

O R D E R
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Heard Mr.B.Rooban, learned Counsel for the petitioner and Mrs.Srimathy, learned Special Government Pleader for the respondents.

2.By consent of both parties, the main writ petition is taken up for final disposal at the stage of admission itself.

3.The petitioner is an Assessee registered with the second respondent. The petitioner is dealing in timber. The petitioner sold timber, during the assessment year 2010-2011, to two entities based in Hosur. The petitioner filled his returns also. The petitioner's specific case is that he sold the planks only as packing materials to his buyers. When there was some objection raised by the department, the petitioner mistakenly conceded as if what was sold fell within item No.57, (industrial inputs). He filed the certificates of the buyers certifying the purchase of the goods as Industrial inputs.

4.The second respondent issued pre revision notice under Section 27 (2) of TNVAT Act. The petitioner lodged his objection, but the same was rejected and the impugned order dated 09.01.2018, came to be passed.

5.The learned counsel for the writ petitioner contended that as per the explanation found in entry No.94 of the first schedule of TNVAT Act 2006, planks panels, battens, when assembled will form tea chest or packing cases will come under packing cases for the purpose of the entry. However, the second respondent has proceeded on the premise that what was sold will fall under entry No.63 of part 'C' of the first schedule of the TNVAT Act 2006. The specific case of the writ petitioner is that the petitioner sold the goods only as packing materials and the buyers had also issued certificate that they purchased the goods only as industrial inputs. Since the explanation in entry No.94 of the schedule 'B' of TNVAT Act 2006 was not considered by the second respondent while passing the impugned order, this Court quashes the same. The matter is remitted to the respondent. The second respondent shall pass fresh orders in accordance with law. It is made clear that the petitioner will be given an opportunity of personal hearing. The learned counsel for the petitioner on instructions undertook to remit 10% of the tax amount within a period of four weeks from the date of receipt of a copy of this order.

6.This Writ petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To:

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,Chennai-600 005.

2.The Assistant Commissioner (ST)-V,
Dindigul V Assessment Circle,
Commercial Taxes Office,
Sub-Collector Office Road,
Dindigul-624 001.

+1cc to Mr.B.ROOBAN,Advocate, SR.No. 51490
+1cc to M/s.Special Government Pleader,SR.No. 51916

W.P. (MD) No. 3493 of 2018
and
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27.02.2018

SSS
KK/JC/22.03.2018/SAR-1/2P-5C