BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.01.2018
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P. (MD) No.574 of 2018
and
W.M.P.(MD)No.574 of 2018

Tvl. Shri Bagampriyal Timbers,
Represented by its Proprietor,
R.Janarthanan ... Petitioner

Vs.

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

2.The Commercial Tax Officer-I,
Tuticorin-I, Assessment Circle,
Commercial Taxes Buildings,
282-A, Beach Road,
Tuticorin-628 001. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of the second respondent in TIN 33495822053/ 2011-12 dated 27.11.2017 and quash the same.

For petitioner : Mr. B.Rooban
For Respondents : Mr. Gunaseelan Muthiah
Additional Government Pleader

O R D E R
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Heard Mr. B. Rooban, learned Counsel appearing for the petitioner and Mr.Gunaseelan Muthiah, learned Additional Government Pleader appearing for the respondents.

2.The writ petitioner is a registered dealer. They had filed their returns for the assessment year 2011-12. On the strength of the web report and the VAT Audit, the second respondent herein issued Pre-Revision notice dated 11.04.2016, proposing to reopen the concluded assessment. The specific allegation made in the said Pre-Revision notice is that the writ petitioner had not made a full disclosure of the purchases made by them.

3.The writ petitioner specifically challenged the contents of the web report on which reliance was placed by the second respondent. For instance one Tvl.Viswas Promoters (P) Ltd had given an impression that they had sold certain quantity of timbers to the writ petitioner. Actually the said Viswas promoters purchased timbers from the writ petitioner and the writ petitioner at no point of time re-purchased the said sold goods from Viswas Promoters. This factual position was clarified by Tvl.Viswas Promoters (P) Ltd by their letter dated 12.05.2016, addressed to the Assistant Commissioner (Commercial Tax-I, Tuticorin). In respect of yet another dealer who appeared to have given a false information, the writ petitioner had lodged a police case.

4.The writ petitioner, in response to the Pre-Revision notice, submitted an objection letter dated 23.05.2016. In the said objection letter the writ petitioner specifically asked to furnish copies of the documents on which reliance was placed by the second respondent authority. The writ petitioner sought an opportunity of personal hearing. They also wanted to cross examine the other end dealers and sought issuance of summons.

5.Even though the writ petitioner placed such a well founded material to support their stand, the second respondent proceeded to pass the impugned order dated 27.11.2017, confirming the proposal earlier made in the Pre-Revision Notice. The defence taken by the writ petitioner was overruled by a non-speaking order. After referring to the stand of the writ petitioner that they had received a letter from Tvl.Viswas Promoters (P) Ltd that they have not effected any sales to the writ petitioner, the second respondent proceeded to term such contentions as not acceptable merely because the said Viswas Promoters had already filed returns showing that they have effected sales to the writ petitioner. Such an approach is clearly unsustainable in law.

6.When the second respondent herein is very much having the letter dated 12.05.2016, submitted by the said Tvl.Viswas Promoters (P) Ltd, the issue will have to be gone into again. Instead, it cannot be causally closed on the ground that the said Viswas Promoters, had already filed their returns. The impugned order deserves to be quashed, since it does not consider the objection lodged by the writ petitioner, from a proper perspective. That apart, the opportunity of personal hearing and the right to cross examine the other end dealers was also not granted. On this ground also the impugned order deserves to be quashed. It is accordingly quashed. The matter is remitted to the file of the second respondent to pass fresh orders in accordance with law after affording sufficient opportunity to the writ petitioner.

7.Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To:

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

2.The Commercial Tax Officer-I,
Tuticorin-I, Assessment Circle,
Commercial Taxes Buildings,
282-A, Beach Road,
Tuticorin-628 001.

+One cc to The Special Government Pleader, SR.No.42657

+One cc to M/s.B.Rooban, Advocate, SR.No.42453

pnn/kmi
RL/5C/3P/KK/SAR1/26/2/2018

ORDER MADE IN
W.P. (MD) No.574 of 2018

17.01.2018