BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)Nos.16253 and 16254 of 2018
and
W.M.P.(MD)Nos.14465, 14466, 14467 and 14468 of 2018

Selvan Timbers,
Represented by its' Proprietor,
S.Selvan : Petitioner in both W.Ps.

Vs.

The Commercial Tax Officer,
Thuckalay at Kattathurai,
Kanyakumari District. : Respondent in both W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN No.33146164413/2011-12 and TIN No.33146164413/2012-13, respectively dated 31.10.2016, and quash the same and consequently, direct the respondent to consider the representation of the petitioner dated 09.05.2018 and grant to the petitioner the web report and other details relied on for issuing the pre-assessment notice dated 11.07.2016 and after granting to the petitioner, an opportunity to submit reply to the notice and a personal hearing, pass orders according to law.

For Petitioner in both W.Ps. : Mr.M.Azeem
For Respondent in both W.Ps. : Mrs.J.Padmavathi Devi, Special Government Pleader

COMMON ORDER

The petitioner is a registered dealer in timber and filed returns for the assessment years 2011-2012 and 2012-2013. Thereafter, the Assessing Authority issued pre-revision notices dated 11.07.2016 calling for objections. Since the petitioner was suffering from some ailment, he did not file his objections. Therefore, the Assessing Authority has confirmed the proposal on 31.10.2016 by way of impugned orders. On 06.04.2018, a demand notice was issued by the respondent demanding the sales tax arrears. Subsequently, the petitioner applied certified copies of the assessment orders and challenging the same, the petitioner is before this Court.

2. The learned counsel for the petitioner would contend that the revision notices were issued pursuant to an inspection conducted in the place of business of the petitioner. The inspection team found certain defects and omissions with regard to purchase turnover and that the petitioner has suppressed the purchase turnover of Rs.34,30,825/- and Rs.26,25,288/- respectively, as per Annexure-I filed by him and Annexure-II of the selling dealer. It is the case of mismatch and the materials which relied on by the respondent were not supplied to the petitioner nor any personal hearing was afforded to him. Therefore, the impugned orders are sought to be set aside.

3. Per contra, the learned Special Government Pleader appearing for the respondent would vehemently contend that the impugned orders are of the year 2016 and the petitioner did not file his objections. Only after a demand notice was issued by the department, he approaches this Court without preferring an appeal to the appellate authority. For non-exhaustion of appeal remedy, the Writ Petitions are liable to be dismissed.

4. I have considered the rival contentions.

5. Admittedly, an appeal remedy is available to the petitioner against the orders impugned herein. In the cases on hand, the revision notices were issued on 11.07.2016 for the respective assessment years. The learned counsel has produced the Medical Certificate, which shows that the petitioner was under treatment for Hemiplegiattwith-Aphagia and Aphasia between 2016 and 2018 and that he was completely bedridden and could not do normal duties. It is also submitted that the sales tax papers were entrusted with the Accountant, who has not filed any objection to the revision notices and also misplaced the assessment orders. Therefore, the petitioner was not in a position to file objections or challenge the assessment orders by way of appeals.

6. In view of the above stated position, since there is an appeal remedy available to the petitioner, he shall exhaust the appeal remedy and without exhausting the same, he cannot maintain the Writ Petitions. Therefore, the Writ Petitions are not maintainable and accordingly, they are dismissed.

7. However, considering the ailment suffered by the petitioner between 2016 and 2018, in order to given one more opportunity to him, permission is granted to the petitioner to file an appeal before the appellate authority, within a period of four weeks from the date of receipt of a copy of this order, after following all

the statutory requirements of statutory deposit. On such appeal being filed, the appellate authority is directed to consider the same and pass orders on merits, within a period of four weeks thereafter.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Commercial Tax Officer,
Thuckalay at Kattathurai,
Kanyakumari District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 75009
+ 1 CC TO Mr.M.AZEEM, ADVOCATE IN SR No. 74855

SML
TE/RP/SAR-1 : 02/08/2018 : 3P/4C

Common Order made in
W.P.(MD)Nos.16253 and 16254 of 2018
Dated: 25.07.2018