IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2019

CORAM

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.32783 & 32784 of 2019
and
W.M.P.Nos.33206 & 33207 of 2019

Cauvery Timber Company Pvt.Ltd.,
Represented by its Managing Director
S.Palanisamy
1A/1 Sathy Main Road,
Vilankurichi,
Coimbatore – 641035. ...Petitioner in both WPs

Vs.

The Assistant Commissioner (ST),
Saravanampettai West Circle,
Coimbatore. ...Respondent in both WPs

Common Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the files of the respondent herein in TIN No.33552200816/2011-12 and TIN No.33552200816/2012-13 dated 31.10.2019 and quash the same.

For Petitioner (in both WPs) : Mr.N.Inbarajan

For Respondent (in both Wps) : Mr.Master Ganesh
Government Advocate

ORDER

Mr.Master Ganesh, learned Government Advocate takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the orders of assessment dated 31.10.2019, passed individually relevant to the Assessment Years 2011-12 and 2012-13.

3. The main grievance of the petitioner is that the Assessing Officer has chosen to pass impugned assessment orders beyond the issue raised in the notice of proposal and therefore, such action violates the principles of natural justice. To put it more precisely, the grievance of the petitioner is that when the show cause notice in both cases, referred to certain Bills of Entry, the Assessing Officer has gone into the other Bills of Entry said to have been ascertained from icegate website and concluded the assessment based on those Bills of Entry as well without putting the petitioner on notice in respect of those Bills of Entry. Therefore, it is contended that the impugned orders are liable to be set aside, solely on the ground of principles of natural justice.

4. The learned counsel appearing for the petitioner reiterated the above contentions after inviting this Court's attention to relevant show cause notices and the impugned orders passed in both the Assessment Years.

5. The learned Government Advocate appearing for the respondent fairly admitted that the impugned orders were passed referring to several Bills of Entry, out of which, only few were referred to in the notice of proposal. Therefore, he has submitted that the matter may be remitted back to the Assessing Officer for redoing the assessment once again.

6. Heard both sides and perused the materials placed before this Court.

7. For the Assessment Year 2011-12, a notice of proposal dated 22.07.2019 referred to three Bills of Entry dated 06.07.2011, 09.08.2011 and 21.11.2011 and alleged that the petitioner made purchase suppression in respect of those three Bills of Entry. Likewise, in respect of 2012-13, the Assessing Officer in the notice of proposal dated 22.07.2019 referred to six Bills of Entry dated 02.06.2012, 30.08.2012, 12.09.2012, 29.10.2012, 08.11.2012, 02.11.2012 and 07.02.2012 and alleged that the petitioner had made purchase suppression with respect of those Bills of Entry. The petitioner gave objection and contested the matter. It seems that they have also filed necessary documents along with reply in support of their contention. However, the Assessing Officer while passing the impugned order of assessment in respect of the Assessment Year 2011-12, has taken into account one more Bill of Entry dated 09.03.2012 and concluded the assessment. Likewise in respect of the Assessment Year 2012-13, the Assessing Officer has taken into account four more Bills of Entry other than the

one referred to in the show cause notice and concluded the assessment. Therefore, it is evident that the Assessing Officer has travelled beyond the proposal made in the notice issued to the assessee and concluded the assessment by taking into consideration certain other Bills of Entry as well, which are not the subject matter of show cause notices. Therefore, as rightly pointed out by the learned counsel appearing for the petitioner, action of the Assessing Officer in concluding the assessment is in clear violation of principles of natural justice.

8. Therefore, this Court, is satisfied to remit the matter back to the Assessing Officer for redoing the assessment once again on merits and in accordance with law. Accordingly, these writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer under the following terms and conditions :-

(a) The petitioner shall treat the impugned orders itself as fresh show cause notice and file their objections with relevant documents within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such objection, the Assessing Officer shall afford an opportunity of personal hearing to the petitioner and thereafter, pass fresh orders of assessment on merits and in accordance with law within a period of six weeks thereafter.

9. It is made clear that this Court, is not expressing any view on the merits of the claim made by the petitioner, as it is for the Assessing Officer to consider and decide. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (ST),
Saravanampettai West Circle,Coimbatore.

+1 cc to M/s.N.Inbarajan,Advocate Sr.No. 97370
+1 cc to The Special Government Pleader Sr.No. 98100

AKM/17.12.19/3P-4C /

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