BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.381 to 384 of 2013
and
M.P.(MD)Nos.2, 2, 2 and 2 of 2013

M/s.Chitra Timbers,
Rep.by its Proprietor, T.Muthian,
No.1/130, Puthucheri Villai,
Kavalsthalam Junction,
Kulasekaram-629 161.
Kanyakumari District. ... Petitioner in all the petitions

Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-600 009.

2.The Appellate Deputy Commissioner (CT),
First Floor, CT Buildings, Reserve Line Road,
Palayamkottai, Tirunelveli-627 002.

3.The Commercial Tax Officer,
Thuckalay,
Kanyakumari District. ... Respondents in all the petitions

COMMON PRAYER:Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent dated 04.12.2012 in his appeal Nos. and year T/4/12 (1991-92), T/5/12(1992-93), T/6/12 (1993-94) and T/7/12 (1994-95) confirming the order of the third respondent dated 30.12.2011 in his TNGST No.D3/10/96-97 (1992-92), TNGST 890065/92-93, TNGST 890065-93-94 and TNGST 890065/94-95 and quash the same and to direct the third respondent to furnish the D7 records and to afford an opportunity of being heard.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.A.Thiyagarajan
Government Advocate

COMMON ORDER

These matters have a checkered history. Initially, the petitioner was assessed on 31.10.1997 for the periods 1991-92, 1992-93, 1993-94 and 1994-95 vide a common order dated 31.10.1997 in terms of the Tamil Nadu General Sales Tax Act, 1956 (in short 'Act').

2. The petitioner challenged the assessments before the Appellate Assistant Commissioner (AAC), who by his order dated 20.09.2004 accepted the argument of the petitioner to the effect that the orders of assessment have been passed in violation of the principles of natural justice, since D-7 records were not supplied to the petitioner as sought and no opportunity of being heard had been afforded to the petitioner. The assessments were thus remanded to be re-done. Paragraphs 9 and 10 of the order state as follows:-

> '9. The appellant is entitled to get the Xerox copies of the D7 records as well as an opportunity of being heard. The Section 12 and 16 of the TNGST Act'59 contemplates that before enhancing assessment, the Assessing Authority has to give a reasonable opportunity of being heard to the assessee. This reasonable opportunity contemplated is the issue of a notice giving details of the proposal based on which the turnover is proposed to be estimated. Here in these cases, there is no evidence for the valid service of the notice on the appellant. Moreover, the copies of the records are also not granted enabling the appellant to file an effective appeal. Hence, the principles of natural justice was violated for passing the assessment orders. Hence, the assessment are set aside and remanded to the Assessing Authority for fresh disposal.
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> 10.The Assessing Authority is directed to grant the Xerox copies of the D7 records at the cost of the appellant, if the appellant apply for the grant of the Xerox copies within one month from the date of receipt of the appeal order. The Assessing Authority shall then grant a fair opportunity of being heard to the appellant and then pass fresh orders according to law within quick reach of time in the interest of revenue. With these directions, the assessment orders are set aside and all the appeals are remanded back to the Assessing Authority for fresh disposal.'

3. Pursuant to order dated 20.03.2004, the petitioner appears to have made a request to the Assessing Officer on 01.03.2006 for xerox copies of the inspection records. This request is clearly belated, since the AAC had granted only time of only one month from the date of receipt of the appellate order to seek such copies.

4. In any event, the request was considered by the Assessing Authority who issued notice to the dealer stating that the D-7 records may be collected by it and copies of day book for the period 1991-92 to 1994-95 be parallely supplied, by the petitioner. Thereafter there appears to have been no further action by the petitioner to either obtain copies of the D-7 records or to supply day books as called for by the officer. These narration as above is set out in the order of the Appellate Assistant Commissioner dated 20.09.2004.

5. To notice dated 18.03.2011 issued by the Assessing Authority in the remand proceedings, the petitioner did not, admittedly reply. This culminated in an order of assessment dated 30.12.2011, challenging which an appeal was filed before Appellate Deputy Commissioner who passed an order dated 04.12.2012. Both the order of assessment and appeal dated 30.12.2011 and 04.12.2012 are impugned in this writ petition.

6. In the light of the narration of facts as aforesaid, I am of the view that these writ petitions are liable to be dismissed. It appears crystal clear to me that the petitioner has no intention of cooperating with the revenue in the conduct of the proceedings in a timely and appropriate manner. Having obtained an order from the Appellate Assistant Commissioner on 20.09.2004, it did not promptly seek copies of the inspection records within the time granted, notwithstanding which the Assessing Officer considered its request, calling upon the assessee to receive the records sought for by it. Thereafter, the assessee has not responded and cooperated in the conduct / completion of proceedings. There has no response or compliance with the pre-assessment notice. Thus, I do not find any flaw in the order of assessment impugned before me. These writ petitions are dismissed. However seeing as the petitioner has an interim injunction from as early as on 08.01.2013, it is permitted to file an appeal before the Sales Tax Appellate Tribunal (Tribunal). Such appeal if filed within a period of two weeks from today, will be entertained by the Registry without reference to limitation and disposed expeditiously and in accordance with law by the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar

To

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-600 009.

2.The Appellate Deputy Commissioner (CT),
First Floor, CT Buildings, Reserve Line Road,
Palayamkottai, Tirunelveli-627 002.

3.The Commercial Tax Officer,
Thuckalay, Kanyakumari District.

+4 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-77090[F] dated 24/07/2019)

+1 CC to M/s.SPL GP (SR-77237[F] dated 24/07/2019)

W.P(MD)Nos.381 to 384 of 2013
23.07.2019

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