BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.06.2019
CORAM
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.12146 of 2015
and
M.P(MD)No.1 of 2015

M/s.Sri Vijayalakshmi Saw Mill,
Rep. by its Partner,D.Sathish Kumar,
No.1/847, Courtallam Road,
Piranoor Border, Shencottah - 627 809,
Tirunelveli District. ... Petitioner

/Vs./

The Commercial Tax Officer,
Shencottah,
Tirunelveli District. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records relating to the impugned notice issued by the respondent in his proceedings Asst.5700511/99-00, dated 12.06.2015 and to quash the same as illegal and without jurisdiction.

For Petitioner : Mr.B.Saravanan
For Respondent : Mrs.J.Padmavathy Devi,
Special Government Pleader.

ORDER

The petitioner assails notice dated 12.06.2015 levying Entry Tax of a sum of Rs.2,05,473/- and penalty of a sum of Rs.3,08,210/- and calling upon the petitioner to remit the aforesaid amounts within seven (7) days from the date of receipt of notice along with interest at 24% per annum.

2.Heard Mr.B.Saravanan, learned counsel appearing for the petitioner and Mrs.J.Padmavathy Devi, learned Special Government Pleader appearing for the respondent.

3.The petitioner runs a saw mill and had purchased a mobile crane for the purpose of moving timber logs inside its factory.

4.A notice dated 23.07.2002 was received from the respondent calling upon the petitioner to remit Entry Tax upon the purchase of the mobile crane. The Tax was quantified at a sum of Rs.82,189/- and penalty, at a sum of Rs.1,23,284/-. Objections were called for. No objections were, however, filed and the proceedings thus culminated in order dated 27.08.2002 confirming the assessment proposals.

5.The petitioner filed W.P.No.37916 of 2002 challenging the aforesaid order. The Writ Petition came to be disposed of on 07.12.2012 permitting the petitioner to file an appeal before the Appellate Authority within 30 days from the date of receipt of a copy of the order and directing the Appellate Authority to admit and dispose the appeal on merits without insisting upon pre-deposit or limitation.

6.Admittedly, the petitioner did not avail the opportunity extended to it by this Court and no appeal was filed. The order of assessment has thus become final and it is in the aforesaid circumstances that the present impugned notice dated 12.06.2015 has come to be issued calling upon the petitioner to remit the outstanding arrears of entry tax and penalty.

7.Two grounds are raised and canvassed by learned counsel appearing for the petitioner before me. The first one is to the effect that the Entry Tax has been quantified at a sum of Rs.2,05,473/- as against a sum of Rs.82,189/- in the original proposal and the penalty at a sum of Rs.3,08,210/- as against the sum of Rs.1,23,284/- in the earlier show-cause notice/proposal. Secondly, similarly placed saw mills are stated to have benefited from appellate orders classifying the machineries more beneficially for the purpose of assessment and the petitioner seeks to derive benefit from the aforesaid appellate orders (one such dated 10.12.2014 in the case of Tvl. New Ambika Saw Mill placed at page 9 of the compilation of documents).

8.Though no counter-affidavit has been filed, Mrs.J.Padmavathy Devi, learned Special Government Pleader appearing for the respondent is fully prepared to argue upon instructions from the respondent/Assessing Officer. It is in these circumstances, that the matter is proceeded with. She supports the impugned notice pointing out that the petitioner has not bothered to pursue the matter as per the order passed by this Court and hence, there is no merit whatsoever in this writ petition. I agree.

9.I am of the view that the Writ Petition does not deserves to be entertained. As rightly pointed out, the petitioner has not availed the benefit extended to it by the learned Single Judge vide order dated 07.12.2012 and has not filed an appeal before the Appellate Authority. Thus in my view and in the aforesaid circumstances, the petitioner cannot be granted the indulgence of the benefit obtained by other assesses in appeal.

10.In the aforesaid circumstances, the petitioner is permitted to treat notice dated 12.06.2015 read with notice dated 23.07.2002 as show-cause notices and to file objections thereto on merits within a period of two weeks from today. Upon receipt of the same, the Assessing Authority shall afford due opportunity of hearing to the petitioner and shall pass final orders, after hearing the petitioner within a period of four weeks thereafter. All issues concerning the merits of the assessment are left open. No further notice need be issued to the petitioner/assessee as this order is dictated in open court and learned counsel have taken note of the timelines as aforesaid. It is made clear that if the petitioner does not avail of the permission granted to file objections on merits as above, order of assessment dated 27.08.2002 will stand reiterated automatically.

11.The Writ Petition is disposed of in the above terms and with the aforesaid directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar(CS)

To

The Commercial Tax Officer,
Shencottah,
Tirunelveli District.

+1 CC to Mr.B.SARAVANAN, Advocate (SR-71307[F] dated 25/06/2019)

W.P(MD)No.12146 of 2015
24.06.2019

ps
MK (19.09.2019) 3P 3C