IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.11.2020
CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 3458 of 2013
and
M.P. No. 1 of 2013

M/s.Victory Timber & Plywoods
Represented by APM. Mammootty
Partner
172, Sydenhams Road
Periamet, Chennai - 3.
... Petitioner

-vs-

The Assistant Commissioner (CT)
Vepery Assessment Circle
5, Ritherdon Avenue
Chennai - 7. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Respondent to grant copies of records, opportunity of examination and verification of records and opportunity of cross examination before passing final orders on the representation dated 28.11.2012 and 01.12.2012.

For Petitioner : Mr. V.Srikanth

For Respondent : Mr. Mohammed Shaffiq,
Special Government Pleader

O R D E R
(through video conference)

Heard Mr. V.Srikanth, Learned Counsel for the Petitioner and Mr. Mohammed Shaffiq, Learned Special Government Pleader appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner was issued a show cause notices dated 15.10.2012 by the Respondent informing that the return filed for tax under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short) for June 2011, July 2011, August 2011, September 2011, October 2011, January 2012 and March 2012 was incorrect and incomplete and that it was proposed to reverse the claim for the sum of Rs. 14,38,977/-, Rs. 26,56,986/-, Rs. 1,81,679/, Rs.

13,27,382/-, Rs. 10,88,593/-, Rs. 10,36,262/- and Rs. 8,43,945/- respectively under Section 19(16) of the TNVAT Act. In response thereto, letter dated 28.11.2012 had been sent by the Petitioner contending that the details of sales made by each of the dealers to the Petitioner relied by the Respondent was required so that he would be able to show the matching of the purchases for the said sales. According to the Petitioner, without those necessary particulars, it would not be possible for the Petitioner to submit any effective reply to that show cause notice. At that stage, the Petitioner has filed this Writ Petition for directing the Respondent to grant copies of the records and opportunity of cross-examination of witnesses on the representations dated 28.11.2012 and 01.12.2012 made by the Petitioner in the re-assessment proceedings before passing any final orders.

3. The primordial contention of the Learned Counsel for the Petitioner is that when the Petitioner has made a specific request that he had wanted certain documents to submit his reply, the Respondent has to communicate the decision as to whether the said request could be acceded, and if not, the reasons for the same have to be disclosed in writing. In this context, reference has been made to the Circular dated 05.04.1984 issued by the Commissioner of Commercial Taxes, which reads as follows:-

> " It is considered that the dealers should know then and there whether their request for further time is complied with or not. The Assessing Officers shall pass orders on such requests on spot and communicate them then and there. If they feel that the dealers have already been given reasonable opportunities and sufficient time and there is no reason for granting further time and order rejecting the request shall be passed and communicated to the dealers then and there. If the assessing officers decide to comply with the request the date fixed for further hearing or extension of time given shall be similarly intimated."

The said circular came up for consideration before the Division Bench of this Court in M/s. EMCEE Chemicals -vs- Registrar, Tamil Nadu Taxation Special Tribunal, Chennai (Order dated 25.09.2001 in W.P. Nos. 8766 to 8769 of 2000), where it has been held as follows:-

> "2. The circular referred to relied upon by the assessees is the one issued by way of clarification by the Commissioner on 05.04.1984. That circular required Assessing Officers to pass orders on requests time from assessees on spot and communicate to them then and there. It also states that if the Assessing Officers feel that the dealers have already been given reasonable opportunities and sufficient time, there is no reason for grating further time, the order rejecting the request shall be passed and communicated to the dealers then and there. If the

Assessing Officers decide to comply with the request the date fixed for further hearing on extension of time given shall be similarly intimated. Here no date was given to the Petitioners and Petitioners after their request for extension and they were not made aware that the time granted was only two weeks. The order made by the Officer at the end of the period while leaving the assessees with the impression that by reason of the period of time sought by them not having been rejected, that period could be regarded by them as has been granted, has therefore, to be set aside with a view to give the assessees the opportunity to give explanation to the demand, fused or slips that had been recovered and on the basis of which a finding of suppression was accorded, which is turn led to a substantial addition to the turnover of the assessees, liability to pay additional tax. We, therefore, set aside the order of the Tribunal, and of the authorities, which were questioned before it and direct the Assessing Officer to receive the objection for the proposed assessment, if such objection is filed within a period of two weeks from today and thereafter make the assessment. Writ Petitions are disposed of accordingly."

Having regard to that settled legal position, it is incumbent upon the Respondent to communicate as to whether the request for furnishing details sought has been accepted, and if not, reasons for the same would have to be stated in writing. If it is decided to furnish the requisite details, the Petitioner would have to be supplied the same by 31.01.2021. The Petitioner shall then submit its reply within a period of 15 working days from the date of receipt of the requisite details or the date of receipt of the order rejecting the request, as the case may be.

4. It is needless to add here that after the said requirements are completed, the Respondent shall conduct enquiry affording opportunity of personal hearing to the Petitioner following the prescribed procedure in consonance with the principles of natural justice, deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment.

The Writ Petition is disposed on the aforesaid terms. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

Maya /vjt

To

The Assistant Commissioner (CT)
Vepery Assessment Circle
5, Ritherdon Avenue
Chennai - 7.

+1 cc to Spl Government Pleader(Taxes) Sr.No. 37267

W.P. No. 3458 of 2013

A.Sk(23.12.2020)