BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.12.2020
CORAM
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.(MD).Nos.17802,17809 & 17812 of 2020
and
W.M.P.(MD).Nos.14849, 14850 & 14851 of 2020

Tvl.Mahalaxmi Timber Industries,
represented by its Partner G.Sankar,
888/3, Courtallam Road,
Piranoor Border,
Shencottai. .. Petitioner in all writ petitions

Vs.

The State Tax Officer (Adjudication),
(Intelligence Wing),
Tirunelveli. .. Respondent in all writ petitions

COMMON PRAYER: Writ Petitions are filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records in GSTIN 33ABDFM7961N1ZR/2017-18, GSTIN 33ABDFM7961N1ZR/2018-19 and GSTIN 33ABDFM7961N1ZR/2019-20, dated 31.10.2020 respectively issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass assessment order afresh by considering the representation dated 23.10.2020 judicially including the opportunity of being heard.

For Petitioner : Mr.S.Karunakar
(in all WPs)
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader
(in all writ petitions)

COMMON ORDER

(This writ petition is heard through video conference)
These writ petitions have been filed challenging the assessment orders, all dated 31.10.2020, passed by the respondent.

2.Heard Mr.S.Karunakar, learned counsel for the petitioner and Mr.J.Padmavathi Devi, learned Special Government Pleader, who accepts notice on behalf of the respondent.

3.By consent of both parties, these writ petitions are taken up for final disposal at the admission stage itself.

4.The petitioner has challenged the assessment orders in these writ petitions on the ground that no sufficient opportunity was granted by the respondent to the petitioner before passing of the impugned assessment orders and the principles of natural justice has been violated.

5.It is the case of the petitioner that due to the pandemic situation, they had sought for time to send reply to the show cause notice issued by the respondent. According to him, the show cause notice was issued for the three assessment years in the month of August 2020 and within a short span of time, the impugned assessment orders have been passed, despite the request being made by the petitioner for grant of sufficient time to send the replies and also despite the petitioner requesting for certain documents, based on which the respondent has issued the show cause notice calling upon the petitioner to pay tax. According to the petitioner, the documents sought for by them was furnished to them only on 19.10.2020, whereas the assessment orders have been passed immediately, on 31.10.2020, without giving sufficient opportunity to raise their objections with regard to the documents furnished by the respondent on 19.10.2020. It is the further contention of the petitioner that a detailed reply was sent, on 02.11.2020, raising objections with regard to the contentions of the respondent that fake invoices were submitted by the petitioner. However, according to the petitioner, under the impugned assessment orders, the reply, dated 02.11.2020 sent by the petitioner has not been considered by the respondent. According to the petitioner, even without waiting for the reply, in a hurried manner and arbitrarily, the impugned assessment orders have been passed. A categorical stand has been taken by the petitioner in all these writ petitions that the documents furnished by the petitioner to the respondent were all genuine ones and no fake invoices were submitted as alleged by the respondent. In such circumstances, these writ petitions have been filed challenging the impugned assessment orders on the ground that the same have been passed violating the principles of natural justice and have been passed arbitrarily and illegally, without considering the objections of the petitioner. It is also the contention of the petitioner that personal hearing was also not afforded by the respondent.

6.The learned counsel for the petitioner drew the attention of this Court to the show cause notices dated 03.08.2020 issued by the respondent. He also drew the attention of this Court to the representation given by the petitioner on 06.10.2020, wherein, the petitioner had sought for copies of the documents, based on which the show cause notices, dated 03.08.2020, was issued by the respondent and they had also requested the respondent to grant reasonable time for the petitioner to send their reply to the show cause notices dated 03.08.2020.

7.The learned counsel for the petitioner also drew the attention of this Court to the final hearing notices dated 14.10.2020, issued by the respondent to the petitioner, wherein the respondent had enclosed the documents sought for by the petitioner, namely cash receipt book marked as 'A' and cash receipt book marked as 'B' and would submit that the documents were furnished by the petitioner only on 19.10.2020. The learned counsel for the petitioner also drew the attention of this Court to the reply dated 23.10.2020, sent by the petitioner together with the postal receipt which discloses that the reply was sent on 02.11.2020. According to the learned counsel for the petitioner, without waiting for the reply, in a hurried manner and by violating the principles of natural justice, that too during the period of pandemic, the impugned assessment orders have been passed, calling upon the petitioner to pay the tax amount running to several lakhs, which the petitioner is not liable to pay as there was no suppression of turnover.

8.Per contra, Mrs.J.Padmavathi Devi, the learned Special Government Pleader appearing for the respondents would submit that sufficient opportunity was granted to the petitioner by the respondent and only thereafter, the impugned assessment orders have been passed. According to her, personal hearing was also afforded to the petitioner. But the petitioner chose not to appear for personal hearing before the respondent. Further, according to the learned Special Government Pleader, principles of natural justice has not been violated and tax liability of the petitioner runs to several lakhs. Therefore, according to her, the present Writ Petition is not maintainable and the only remedy available to the petitioner is to file the statutory appeal.

9.This Court has perused and examined the materials available on record as well as the impugned assessment orders. Admittedly, the first show cause notice was issued under the GST Act by the respondent on 03.08.2020. Admittedly, the State was under lock down, when the first show cause notice was issued by the respondent. On receipt of the said show cause notices, the petitioner by his reply, dated 06.10.2020, has requested the respondent to furnish the copies of the documents to them, which is the basis for the show cause notices dated 03.08.2020, issued by the respondent.

10.It is the case of the respondent that the petitioner has submitted fake invoices with regard to the purchases effected by them. The petitioner had sought for copies of the said invoices from the respondent as well as other documents, which is the basis for issuing show cause notices to the petitioner on 03.08.2020. Admittedly, the documents were furnished to the petitioner only on 19.10.2020. As seen from the final notices, dated 14.10.2020 issued by the respondent, within a span of 10 days, the impugned assessment orders have been passed, which are all dated 31.10.2020.

11.In fact as seen from the documents filed in the typed set of papers along with these writ petitions a copy of the reply, dated 23.10.2020, is also enclosed, which reveals that a detailed reply has been given by the petitioner reiterating that there was no suppression of turn over and the documents submitted by them to the respondent Department were also genuine ones and there are no fake invoices as alleged by the respondent in the show cause notices, dated 03.08.2020. Even though a reply has been sent, the same has not been considered by the respondents, as seen from the impugned assessment orders all dated 31.10.2020. The reply, dated 23.10.2020, sent by the petitioner was disputed only on 02.11.2020, by the petitioner as seen from the postal receipt, which has also been filed in the typed set of papers filed along with these writ petitions. Even without waiting for the reply, the respondent has passed the impugned assessment orders against the petitioner on 31.10.2020, itself.

12.Admittedly, the show cause notices were issued on 03.08.2020 and the impugned assessment orders have been issued on 31.10.2020, within a short period of three months. When the petitioner has been seeking for sufficient time for sending a detailed reply and that too when he has sought for documents, which was furnished only on 19.10.2020, the respondent ought to have given some more time to the petitioner to place all his objections with regard to the demand made by the respondent as per the show cause notices, dated 03.08.2020. However, as seen from the impugned assessment orders, sufficient time has not been granted to the petitioner to raise all objections available to them under law. When it is the categorical stand of the petitioner that they are not liable to pay the demand as claimed by the respondent, the respondent ought to have given sufficient opportunity to the petitioner to raise all objections. However, as observed earlier, the respondent has not done so, while passing the impugned assessment orders. However, this Court considering the huge amount of taxes payable as seen from the impugned assessment orders, this Court will have to put the petitioner on terms, before the impugned orders are quashed and remanded back to the respondent for fresh consideration on merits and in accordance with law.

13.This court is of the considered view that the petitioner will have to pay a sum of Rs.3,00,000/- in respect of each of the impugned assessment order on or before 05.01.2021 and on such payment, the impugned assessment orders shall stand quashed.

14.For the foregoing reasons, this Court directs the petitioner to pay a sum of Rs.3,00,000/-, in respect of each of the impugned assessment orders of the respondent on or before 05.01.2021 and on such payment, the impugned assessment orders shall stand quashed and the matter remanded back to the respondent for fresh consideration and the respondent shall pass final orders on merits and in accordance with law, after giving adequate opportunity to the petitioner to raise all their objections and also grant them the right of personal hearing within a period of twelve weeks from the date of payment of the conditional order imposed under this order.

15.It is also made clear that if the petitioner fails to pay the conditional amount, as mentioned in the order, the writ petitions shall stand dismissed automatically.

16.With the aforesaid direction, this writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The State Tax Officer (Adjudication),
(Intelligence Wing),
Tirunelveli.

+1 CC to Mr.S.KARUNAKAR, Advocate (SR-24564[F] dated 09/12/2020)

W.P.(MD).Nos.17802,17809
& 17812 of 2020
07.12.2020

VB (22.12.2020) 5P 3C