BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :15.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P(MD)Nos.456 and 462 of 2021
and
W.M.P.(MD)Nos.385 and 392 of 2021

Britto Timbers Private Limited,
Represented by its Managing Director,
G.Arul Shoban ... Petitioner in both W.Ps

Vs.

The State Tax Officer-2 (Adjudication),
(Intelligence Wing)
Office of the Joint Commissioner (ST),
Commercial Taxes Buildings,
Reserve Lane, Palayamkottai,
Tirunelveli 627 002. ... Respondent in both W.Ps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in GSTIN: 33 AAECB9039M1ZE/2018-19, and GSTIN: 33 AAECB9039M1ZE/2019-20, dated 31.10.2020 respectively, and quash the same and consequently direct the respondent to consider the reply of the petitioner dated 22.10.2020 and grant the records and opportunities required by the petitioner in the reply and thereafter grant an opportunity to submit further reply and a personal hearing and then pass orders according to law.

(in both W.Ps)
For Petitioner : Mr.Azeem.M
For Respondent : Mrs.J.Padmavathi Devi,
Special Government Pleader.

COMMON ORDER

Heard the learned counsel for the writ petitioner and the learned Special Government Pleader for the respondent.

2.The petitioner in both the writ petitions is one and the same. The assessment years are 2018-2019 and 2019-2020. The petitioner has registered themselves as a dealer with State Tax Office at Thuckalay, Kanyakumari District. The petitioner's place of business was inspected by the respondent on 21.02.2020. The stock statement of the petitioner was also taken. The petitioner was enquired about the purchases of timber effected from M/s.Mekala Timber and Hardwares, Rajakkamangalam and M/s.Dhayalan Timber Traders, Rajakkamangalam. The case of the respondent is that actually there was no transaction between the petitioner on the one hand and the said M/s.Mekala Timber and Hardwares, Rajakkamangalam and M/s.Dhayalan Timber Traders, Rajakkamangalam and that fake bills were generated. The respondent would claim that this came to be known when the Intelligence Wing Officials inspected the places of business of those two dealers. Based on the same, the respondent issued demand cum show cause notice, dated 19.08.2020. The petitioner submitted their reply dated 22.10.2020. In the said reply, the petitioner asked for copies of the statements recorded at the time inspection of M/s.Mekala Timber and Hardwares, Rajakkamangalam, M/s.Dhayalan Timber Traders, Rajakkamangalam and M/s.Pathirakaliamman Transport, Sivakasi. The petitioner also appeared before the respondent on 24.10.2020 and asked for one more opportunity of personal hearing after they are served with copies of the statements in question. Without acceding to the said request, the impugned orders came to be passed. They are under challenge in these writ petitions.

3.I made it clear to the learned counsel for the petitioner that unless the petitioner can show clear violation of principles of natural justice, I would not be inclined the entertain the writ by bypassing appeal remedy available to the petitioner. Thereupon, notice was issued to the respondent to hear them on this limited question.

4.Today when the matter was taken up for hearing, the respondent filed their counter affidavit. I posed a specific question as to whether in the impugned orders, statements of those three persons namely., M/s.Mekala Timber and Hardwares, Rajakkamangalam, M/s.Dhayalan Timber Traders, Rajakkamangalam and M/s.Pathirakaliamman Transport, Sivakasi, have been relied upon. The petitioner's counsel drew my attention to the relevant portions of the impugned orders. There is no dispute whatsoever that their statements have been relied upon. When statements of certain persons have been relied, it is the duty of the respondent to serve copies of the said statements to the petitioner so that the petitioner can deal with them in their explanation. That alone may not be sufficient. The respondent should also make available the persons who gave the statements, if the petitioner wanted to cross examine them. The respondent would state that they are not having access to those documents. That is beside the point. When the respondent has chosen to place reliance on certain documents, it is his duty to serve a copy of the same to the petitioner. In the case on hand, copies of the relied upon documents have not been served on the petitioner in advance. The persons who gave statements adverse to the petitioner were not made available for cross examination. It is relevant to note that the petitioner had made a specific request for cross examination of those three persons also in his explanation. In fact the petitioner had stated that he is handicapped and he is unable to offer full explanation in the absence of those copies.

5.I note that the principles of natural justice have clearly been violated in this case. In this view of the matter, the orders impugned in these writ petitions are set aside. The matter is remitted to the file of the respondent, who shall pass order afresh in accordance with law after fully complying with the principles of natural justice. In other words, the respondent must make available the copies of the relied statements to the petitioner. The petitioner will be given time to offer his further explanation. Thereafter, personal hearing must be afforded to the petitioner. In other words, all the statutory procedures will have to be scrupulously followed in letter and spirit.

6.With these directions, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (crl side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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-2 (Adjudication),
(Intelligence Wing)
Office of the Joint Commissioner (ST),
Commercial Taxes Buildings,
Reserve Lane, Palayamkottai,
Tirunelveli 627 002.

+2 CC to M/s.M.AZEEM, Advocate (SR-5175,5176[F] dated 15/02/2021)

+1 CC to SPL GP (SR-5373,5308[F] dated 16/02/2021)

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VB (01.03.2021) 3P 5C