BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.498 of 2019
and
WMP(MD)No.416 of 2019

M/s.Sahana Timbers,
Rep.by its Proprietor
M.Jakir Hussain ... Petitioner

Vs.

The State Tax Officer,
Tenkasi Assessment Circle,
Tenkasi(C). ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in TIN No.33835685193/2015-16 and quash the order dated 23.04.2018 as it is unlawful and against law and further direct the respondent to pass fresh order on verification of accounts after making proper enquiry as contemplated under Section 27 of the TNVAT Act.

For Petitioner : Mr.A.Satheeshmurugan
for Mr.R.D.Ganesan
For Respondents : Mr.G.Arjunan
Government Advocate

O R D E R

Heard the learned counsel on either side.

2.The petitioner is a dealer registered with the respondent. The petitioner's concluded assessment was sought to be reopened. After granting an opportunity of hearing to the petitioner, the impugned order came to be passed. The contention of the petitioner is that the respondent erred in including the sawing charges to the tune of Rs.6,86,857/- in the turn over. According to him, the said amount would represent the petitioner's income and that it cannot be included in the turn over.

3.I wanted to know if the petitioner had filed returns before the Income Tax authority and whether the said amount has been assessed to income tax. There is no satisfactory response. If the amount received by the petitioner towards sawing charges represents the petitioner's personal income, then, the same should have been reflected in the Income Tax returns filed by the petitioner herein. But the materials placed before me are not sufficient to arrive at any finding.

4.In these circumstances, I am of the view that the petitioner has to necessarily avail alternative remedy available under the Act. When the writ petition was admitted, I granted interim stay that the petitioner should deposit 10% of the disputed tax. The petitioner is directed to deposit 15% more of the disputed tax within a period of three weeks from the date of receipt of copy of this order. The petitioner is at liberty to file statutory appeal within a period of four weeks from the date of receipt of copy of this order. If the balance amount of 15% of tax is paid within three weeks and the statutory appeal is filed within a period of four weeks from the date of receipt of copy of this order, the appellate authority will entertain the appeal on merits and in accordance with law without reference to limitation.

5.The writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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,

Tenkasi Assessment Circle,

Tenkasi(C).

+1 CC to M/s.R.D.GANESAN, Advocate (SR-8024[F] dated 01/03/2021)

+1 CC to M/s.SPL GP (SR-8201[F] dated 02/03/2021)

W.P.(MD)No.498 of 2019
and
WMP(MD)No.416 of 2019
01.03.2021

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