BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.10.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**

W.P.(MD) Nos.15187, 15188, 15189 of 2021

and

W.M.P(MD)Nos.12117 to 12120 & 12122, 12123 of 2021

Tvl.P.R.S Furniture Wood Works,
Represented by it's Partner,
P.Senthil Kumar ... Petitioner in all WPs

vs.

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The State Tax Officer(Collection and Arrear),
O/o The Deputy commissioner (ST),
Inspection Unit,
Commercial Taxes Building,
Reserve Line Road, Palayamkottai,
Tirunelveli District-627 002. ... Respondents in all WPs

Common Prayer:
Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the second respondent in GSTIN.33AAOFP8263A1Z9/2017-18, 33AAOFP8263A1Z9/2019-20 and 33AAOFP8263A1Z9/2018-19 respectively dated 31.10.2020 and quash the same.

For Petitioner : Mr.B.Rooban (in all Wps)

For Respondents : Mr.R.Sureshkumar (in all WPs)
Government Advocate

COMMON ORDER

Since the issue raised in these Writ Petitions is one and the same, with consent of both sides, these writ petitions were heard together and are decided by this common order.

2. The petitioner has been registered with Nagarkoil -2 Assessment Circle of the respondent Department holding GSTIN.33AAOFP8263A1Z9 and the petitioner has been regularly filing monthly returns under the Central Goods and Services Tax Act, 2017 [hereinafter referred to as the "Act" in short].

3. However, based on the inspection conducted on 21.02.2020, the second respondent issued intimation on 28.05.2020 for the Assessment Years 2017-18 to 2019-20. Pursuant to which, elaborate replies have been filed by the petitioner on 30.06.2020, denying the allegation. However, without properly considering the said reply or objection given by the petitioner, the second respondent issued the demand cum show cause notices dated 01.09.2020, directing show cause. In response to the same, the petitioner filed the replies by way of show cause on 03.10.2020. Even that was not properly considered and ultimately, the assessing authority passed the impugned orders of assessment cum demand dated 31.10.2020. Challenging the same, these Writ Petitions have been filed.

4. When a question was posed before the learned counsel for the petitioner as to why the appeals were not preferred against the impugned orders under Section 107 of the Act, the answer would be that, though in the reply by way of show cause, certain documents and information were furnished by the petitioner that the tax had also been paid in exchequer, those aspects had not been properly considered and not been considered in a proper perspective and without considering the same, since the impugned orders have been passed, on that ground, the petitioner wants to challenge the impugned orders by filing the Writ Petitions directly before this Court under Article 226 of the Constitution of India.

5. However, Mr.R.Sureshkumar, learned Government Advocate appearing for the respondents would submit that in these cases, entire procedure as has been contemplated under Section 73 of the Act, has been followed, where the intimation under Sub Section (5) of Section 73 of the Act has been issued on 28.05.2020 and thereafter, the case was adjourned for sometime and on 30.06.2020, reply has been filed. Not satisfying with the said reply, the demand cum show cause notice under Section 73 (1) of the Act was issued. Responding to the same, reply / objection had been filed on 03.10.2020. Thereafter, personal hearing notice was issued on 07.10.2020, and after giving such opportunity for personal hearing and having considering the inputs supplied by the petitioner against the show cause notices cum demand, confirming the said proposal made in the show cause notice, the impugned orders of assessment and demand have been made for three assessment years on 31.10.2020.

6. Thereafter, the learned Government Advocate would submit that the procedure as has been contemplated under Section 73 of the Act since has been scrupulously followed by giving all opportunities to the petitioner, no grounds can be taken by the petitioner to challenge the impugned orders, if at all it was made by the petitioner before this Court. Instead, according to the learned Government Advocate, the petitioner can very well prefer an appeal under Section 107 of the Act before the appellate authority. Therefore, on that ground itself, these Writ Petitions cannot be entertained before this Court, he contended.

7. I have considered the said rival submissions made by the learned counsel appearing for both parties and have perused the materials placed before this Court.

8. Without going into the merits of the claim made by the petitioner as against the orders impugned, since there has been an appellate remedy provided under Section 107 of the Act, which can very well be availed by the petitioner as the same has been mentioned in the impugned order itself, as there is no plausible reason on the part of the petitioner for not availing such an appeal remedy, but the petitioner has filed the writ petitions by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

9. It is the settled proposition that if want of jurisdiction, violation of the statute and denial of principles of natural justice, only in such circumstances, the Writ Petition would be entertained by this Court against order in original ie., the orders passed by the original assessing authority.

10. In every Tax Statute, there is hierarchy of authorities provided for preferring further appeal, revisions etc. Such appeal remedies shall be availed by the assesses/taxpayers without default.

11. Herein the case in hand, though there is an appeal remedy under Section 107 of the Act, the petitioner has chosen to file the Writ Petitions before this Court on the ground that the reason stated in the reply or objection or show cause by the petitioner had not been properly considered or not considered in a proper perspective. Such an issue can very well be decided by the appellate authority as it coupled with facts and therefore, each and every minute details of the facts on tax matters cannot be gone into by the Writ Court. In that view of the matter, this Court feels that while rejecting these Writ Petitions, liberty can be given to the petitioner to file an appeal before the appellate authority as per the provisions of the Act.

12. In that view of the matter, all these Writ Petitions are rejected with liberty to the petitioner to file an appeal before the appellate authority and if any such appeal is filed, the time taken or consumed by the petitioner in filing these writ petitions can be excluded for calculating the limitation period.

13.. With these observations and liberty, all these Writ Petitions are dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gbg/sm

To

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The State Tax Officer(Collection and Arrear),
O/o The Deputy commissioner (ST),
Inspection Unit, Commercial Taxes Building,
Reserve Line Road, Palayamkottai,
Tirunelveli District-627 002.

+1 CC to M/s.SPL.GP (SR-31502[F] dated 07/10/2021)

+3 CC to M/s.B.ROOBAN, Advocate (SR-31399,31401,31400[F] dated 06/10/2021)

W.P.(MD) Nos.15187, 15188, 15189 of 2021
Dated:
06.10.2021

RD/JC(12/11/2021) 4P 7C