BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2021

CORAM:
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)No.16073 & 16074 of 2021 and
WMP(MD) Nos.12939, 12940 & 12941 of 2021

M/s.Sril Laxmi Timbers Pvt Ltd,
Represented by its Authorised Signatory,
Mr.Prakash Patel,
No.13-A, Shencottai Road,
Tenkasi,
Tenkasi District – 627 811. ...Petitioner in both WPs

Vs.

State Tax Officer (Collection and Arrear),
Tirunelveli. ... Respondent in both WPs

COMMON PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records comprised in Orders GSTIN:33AAOCS9150N1ZP/2017-18 dated 31.12.2020 & GSTIN:33AAOCS9150N1ZP/2018-19 dated 31.12.2020 on the file of the respondent and quash orders GSTIN:33AAOC9150N1ZP/2017-2018 dated 31.12.2020 and GSTIN:33AAOCS9150N1ZP/2018-19 dated 31.12.2020, and consequent recovery notices dated 15.04.2021 and direct the respondent to pass fresh orders after providing a reasonable opportunity.

For Petitioner :Mrs.G.Dhanamadhri
For Respondent :Mr.R.Sureshkumar
Government Advocate
(In both Writ Petitions)

C O M M O N O R D E R

Since both Writ petitions in WP(MD) Nos. 16073 and 16074 of 2021 are filed by the same petitioner, with regard to the impugned assessment pertaining to the assessment years 2017-2018 and 2018-2019, these Writ Petitions are taken up together and disposed of by this common order.

2. The petitioner is engaged in the business of processing and supply of timber from the year 2010. Insofar as the assessment year 2017-2018 and 2018-2019, the petitioner had filed the return with total turn over as well as taxable turn over. Thereafter, on 10.09.2020, an inspection had been conducted at the business premises of the petitioner and it was found that there was no

business activities in the principal place of business and the additional place of business there were some 145 burma teak in the harbour site. On verification of documents available in GSTN portal, that the taxable person has not actually effected any supply of goods or services or both, instead, issued invoices without actual movement of goods, therefore, the ITC availed and utilized by the taxable person was not proper. Hence, under Section 16(2) of CGST Act, it was proposed to reverse the ITC and pay the ITC along with interest and penalty, in the pre-intimation notice. In view of the said *prima facie* view taken by the Revenue, after inspection of the premises of the petitioner, the Revenue had issued summons on 15.09.2020. The taxable person not attended, but requested time for one month. Time was given for filing reply within 15 days. Thereafter, on 01.10.2020, DRC-01A Notice was issued, that was also not attended. However, GSTR 9C Auditor statement (combined Pondicherry and Tenkasi) was filed by the Accountant on 19.10.2020. However, the said documents were not matched. Therefore, it was requested further time of one month for production of records. On 02.11.2020, show cause notice was issued, which was received on 06.11.2020, wherein time was given for 30 days for filing reply. On 01.12.2020, the petitioner attended and requested time for one month more for production of records. Thereafter, final hearing notice was issued on 09.12.2020 and again on 17.12.2020, wherein final opportunity was given to file a reply and to attend final hearing. However, both notices were not attended, lastly on 29.12.2020, the respondent Revenue received a reply dated 17.12.2020 of the petitioner assessee, where also the petitioner has requested further time, as they will produce further records soon. Not satisfied with the same, the Revenue proceeded to complete the assessment and passed the impugned assessment orders dated 31.12.2020, in both the cases. Aggrieved over the said orders of assessment, these Writ Petitions are filed.

3.Heard Mr.G.Dhanamadhri, the learned counsel appearing for the petitioner/assessee, who would submit that, there has been a violation of principles of natural justice, as no proper opportunity of hearing or time to reply to the show cause notice and to produce the documents was given and also the impugned orders of assessment has gone beyond the scope of show cause notice issued. Therefore, on the basis of these two prime grounds and on also the other grounds urged in the Writ Petitions, the impugned orders are vitiated and therefore those orders are liable to be set aside, she contended.

4. In support of her contention, the learned counsel appearing for the petitioner has submitted that, on 17.12.2020, a reply has been given by the petitioner, where the petitioner has, after submitted certain records, and in order to submit further records, which were not readily available and those records have to be obtained from the company or dealers, from where the purchase had taken place and therefore, specifically stated that as soon as

possible, those records would be produced by the authorised representative of the petitioner. Therefore, if at all, any further action is to be initiated, the same can wait for till the petitioner will have one more personal hearing, in this connection. Though, the said request having been made on 17.12.2020, which has been admittedly received by the Revenue on 29.12.2020, the impugned assessment order has been passed on 31.12.2020. Therefore, the learned counsel appearing for the petitioner submits that, there has been violation of principles of natural justice as no fair opportunity was given to the petitioner, before passing the impugned order.

5.The learned counsel for the petitioner would also point out that, in the show cause notice, dated 27.10.2020 and 02.11.2020, it has been specifically stated that from three dealers, namely, Sri Sivasakthi Trade Mart, Pondicherry, Cauvery Saw Mill and Greenwood Trading Company, purchase had been made by the petitioner/assessee and based on which, ITC has been claimed by the petitioner assessee. Therefore, on what basis ITC was claimed, based on the purchase from these companies were directed to be explained and accordingly, documents were sought for. When documents were submitted, in the impugned order, the assessing officer has introduced one more company namely Sri MRP Enterprises, Pondicherry. In fact, that has been first introduction through the impugned order and not in the show cause notice and therefore, it is evident that the impugned order has travelled beyond the scope of show cause notice. In view of the settled legal proposition, the assessment order cannot travel beyond what has been stated in the show cause notice. On that ground also, the impugned assessment is in violation of principles of natural justice, hence the learned counsel urged that the impugned order is liable to be interfered with.

6. Heard, Mr. R. Suresh Kumar, learned Government Advocate appearing for the respondent, who pointed out that, insofar as the ground raised by the petitioner that no opportunity was given or the principles of natural justice have been violated is concerned, it is not one show cause notice given, for which, the petitioner had given reply or sought for time and without giving such time, the assessing officer has proceeded to pass the impugned order. How many times after inspection summons were issued, show cause notices were issued, final hearing notices were issued, have been clearly listed out in the impugned order itself, for which, the learned Government Advocate pointed out the following averment made in the impugned order:-

Date of Intimate	Details	Taxable person Reply	Remarks
10.09.2020	Inspection	Not attended	Taxable persons not attended the inspection due to Covid 19. Taxable persons were in Pondicherry.
11.09.2020	Inspe	Not attended	
15.09.2020	Summon	Not attended	Requested time for one month for the production of records
			Time given for filing reply within 15 days
01.10.2020	DRC-01 A	Not attended	Requested time for one month for the production of records
			GSTR 3 B, GSTR 9, GSTR 9 C Auditor Statement (Combined Pondicherry and Tenkasi) filed by the Accountant Vikram on 19.10.2020 but document was not matched. Requested time for one month for the production of records.
02.11.2020	Show cause notice	Received on 06.11.2020	Time given for filing reply within 30 days
01.12.2020		Attended	Requested time for one month for the production of records
09.12.2020	Final hearing notice	Not attended	Time for filing reply within 15 days (received on 12.12.2020)
17.12.2020			Requested time
29.12.2020		Attended	Reply filed but related documents not submitted

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7.By relying upon these correspondences, the learned Government Advocate reiterated that, opportunities were given more than once, twice, thrice to the petitioner. He further submits that, therefore, the question of violation of principles of natural justice, in this case, does not arise. Therefore, on the alleged ground of violation of principles of natural justice, this Writ Petition cannot be entertained. He would also submit that insofar as the introduction of M/s.MRP Enterprises, Pondicherry is concerned, it is not the new introduction, it is only related to the Sri Sivasakthi Trade Mart, from where, the petitioner claimed to have purchased goods and based on which, ITC was claimed. However, it is revealed that the petitioner purchased or said to have purchased the goods from Sri Sivasakthi Trade Mart and sold the goods to Sri MRP Enterprises in the same place, that is, next door. Therefore, it is a bogus sale claimed to have been made for the purpose of claiming ITC, without actual purchase made in this regard. Therefore, the learned Government Advocate submits that, this aspect has also been properly discussed in the impugned order, as the purchase said to have been made from Sri Sivasakthi Trade Mart alone is the question, as to whether the petitioner can claim ITC and therefore this is not the new introduction, which has already been found place in the show cause notice already issued in this regard to the petitioner. Therefore, the learned Government Advocate would contend that, these grounds urged on behalf of the petitioner are totally untenable and beyond the scope of available records. Therefore, the plea made by the petitioner's side to entertain this Writ Petition against the impugned assessment order without exercising appeal remedy by filing proper appeal before the Appellate Authority is without any merits and hence he seeks dismissal of the Writ Petition.

8.I have considered the rival submissions made by the learned counsel appearing for the parties and perused the material placed before this Court.

9. Insofar as the first ground urged by the petitioner that no opportunity was given, by thus, there has been violation of natural justice is concerned, as discussed above, several opportunities had been given to the petitioner and each and every time either the petitioner has not attended such opportunity or simply attended through the representative and sought for time. The opportunities given by the Assessing Authority were not properly utilized by the petitioner and when final notice was issued, even then, further time was sought for and personal hearing was not attended. Therefore, on 10.12.2020, again notice was issued, for which, on 17.12.2020, the petitioner has given a reply, claimed to have supplied documents. Thereafter, in the said reply dated 17.12.2020, merely because the petitioner sought for or made a request to the Assessing Authority, not to initiate any further action, till the petitioner will have one more personal hearing is concerned, it is an attempt of stretching up of opportunity, which is beyond the scope of personal hearing as, such a personal hearing opportunity was given to the petitioner more than once and without utilising that personal hearing opportunity, the petitioner unilaterally cannot seek for one more personal hearing and make a request to the Assessing Authority, not to initiate further action till the assessee will have one more personal hearing as that is unknown to the procedure being established. Therefore, in these cases, as per records, which have been clearly demonstrated by the Revenue, sufficient opportunity was given to the petitioner, which has either not been properly utilized or they wanted to prolong the assessment process further, for the reasons best known to them. Therefore, the ground of alleged violation of principles of natural justice is not available in these cases.

10.Insofar as the other ground urged by the petitioner that the impugned order has gone beyond the scope of show cause notice is concerned, it is the case of the petitioner that, with regard to the goods sold to Sri MRP Enterprises, Pondicherry, it was first time introduced therefore that is beyond the scope of the show cause notice. But the fact remains that, in the show cause notice, three traders namely, Sri Sivaskthi Trade Mart, Pondicherry, Cauvery Saw Mill and Greenwood Trading Company were given and in this regard, the alleged purchase made by the petitioner/assessee from Sri Sivaskthi Trade Mart had been sold to one MRP Enterprises at Pondicherry that is in the same byepass Road at Pondicherry. Both Sri Sivaskthi Trade Mart and Sri MRP Enterprises are located in the same place and the assessee purchased the goods and sold it to the next door. Therefore, according to the Revenue, assessee entered bogus entry bill, using the registration and therefore, ITC claimed by the petitioner in this regard is a wrong claim, that is, in fact, the basis for issuance of show cause notice. Therefore, it cannot be considered *prima facie* that the respondent has gone beyond the scope of the show cause notice in their assessment order, as the source of purchase and the source of selling to establish the alleged bogus transaction taken place in this regard, the Assessment Officer has pointed out in the impugned order about the buyer. Therefore, that cannot be treated as a new introduction and thus the second ground urged by the petitioner that the impugned assessment order has gone beyond the scope of the show cause notice is without any substance.

11. In view of the above, this Court feel that the petitioner cannot successfully challenge the impugned orders in these Writ Petitions, that too, without exercising the appeal remedy as the petitioner can very well approach the Appellate Authority, urging these grounds or any other grounds.

12.Therefore, without prejudice to the rights of the petitioner to file an appeal against the impugned orders, these Writ Petitions are liable to be dismissed and accordingly are dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vrn/tmg

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 (Collection and Arrear),
Tirunelveli.

+1 CC to M/s.SPL GP (SR-28714[F] dated 09/09/2021)

W.P.(MD)No.16073 & 16074 of 2021 and
WMP(MD) Nos.12939, 12940 & 12941 of 2021
08.09.2021

PS(CO)
KB(09.11.2021) 7P 3C