BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.6415 to 6418 of 2018

and

W.M.P.(MD)Nos.6223 to 6226 of 2018

Tvl.John Saw Mill Private Limited,
Represented by its Managing Director,
S.Maria John, aged about 59 years,
S/o.Savarimuthu,
No.10/1, Seevalaperi Road,
Palayamkottai,
Tirunelveli District-627 002. ... Petitioner in all W.Ps.

-Vs-

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

2.The Assistant Commissioner(CT),
Palayamkottai Assessment Circle,
Cornmercial Tax Building,
Reserve Line Road,
Palayamkottai,
Thirunelveli District- 627 002. ... Respondents in all W.Ps.

Prayer in W.P.(MD)No.6415 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN 33705565906/2012-13, dated 23.12.2016 and quash the same and to consequently, direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

Prayer in W.P.(MD)No.6416 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN 33705565906/2013-14, dated 23.12.2016 and quash the same and to consequently, direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

Prayer in W.P.(MD)No.6417 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified

Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN 33705565906/2014-15, dated 23.12.2016 and quash the same and to consequently, direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

Prayer in W.P.(MD)No.6418 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN 33705565906/2015-16, dated 23.12.2016 and quash the same and to consequently, direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner	:	Mr.R.Rooban(In all WPs)
For R1 & R2 (in all W.Ps.)	:	Mr.G.Arjunan Government Advocate

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner had filed these four writ petitions in respect of the assessment years 2012-13, 2013-14, 2014-15 and 2015-16. The petitioner's assessment for the said years was concluded on deemed assessment basis under Section 22 of TNVAT Act. While so, there was a surprise inspection made by the Enforcement Wing Officials on 15.03.2016 and 16.03.2016. They noticed certain defects. Based on the inspection proposals, the second respondent issued pre-revision notices in October 2016. The petitioner submitted a letter dated 07.12.2016 requesting the assessing officer to furnish them with the copies of the inspection proposals, so that, they can give their objections. Instead of acceding to the said request, the assessing officer chose to call upon the petitioner to appear for personal hearing. On the said date, the petitioner once again reiterated their request. Thereafter, the impugned orders came to be passed. They are assailed in these writ petitions.

3.Till date, no counter affidavit has been filed. However, the present assessing officer appeared before this Court through video conferencing and submitted that the petitioner herein had filed W.P.(MD)No.12799 of 2018 in respect of the assessment year 2011-12 and that vide order dated 05.12.2018, this Court had set aside the same and remanded the matter.

4.However, taking a queue from the said order, there appears to have been the revision of the petitioner's assessment for the subsequent years also. It is firmly stated that 18.06.2019, an order was passed and it was held that the petitioner is not in arrears.

5.The submission of the assessing officer is virtually that the writ petitions have become infructuous. However, the learned counsel is not sure of the factual position and he wants this Court to independently test the correctness of the impugned orders.

6.I sustain the core contention of the petitioner's counsel that when the petitioner asked for copies of the inspection proposals, without responding to the said request, the authority erred in passing the impugned orders. On this sole ground, they are liable to be quashed. They are accordingly set aside. If as now claimed by the assessing officer, nothing survives in the matter, of-course, the second respondent can leave the matter as it is. If the issue have not become infructuous, the second respondent will pass orders afresh in accordance with law. In the earlier order dated 05.12.2018, I had held as follows:-

> "2.I am of the view that to enable the petitioner to effectively take part in the personal enquiry, the petitioner ought to have been furnished with a copy of the inspection proposal. Therefore, on this sole ground, the impugned order in the writ petition is set aside and the matter is remitted to the file of the second respondent. The second respondent shall furnish a copy of the inspection proposal to the writ petition. Thereafter, date for personal hearing shall be fixed. The second respondent shall pass orders afresh in accordance with law uninfluenced by the stand of the Enforcement Wing Officials.
>
> 3.If the Assessing Authority propose to issue a fresh pre-revision notice without referring to the proposal to the Enforcement Wing Officials, she need not furnish a copy of the same. The Writ Petition is allowed accordingly. "

7.These writ petitions are also allowed on the same basis. I once again reiterate that if the issues have become infructuous, the respondents also may close the proceedings by recording the subsequent developments. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmi

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

2.The Assistant Commissioner(CT),
Palayamkottai Assessment Circle,
Cornmercial Tax Building,
Reserve Line Road,
Palayamkottai,
Thirunelveli District- 627 002.

+1 CC to M/s.B.ROOBAN, Advocate (SR-11359[F] dated 16/03/2021)

W.P.(MD)Nos.6415 to 6418 of 2018
and
W.M.P.(MD)Nos.6223 to 6226 of 2018
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KK(04.06.2021) 4P 4C