BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.1173 of 2015 and
M.P.(MD)No.1 of 2015

M/s.Matha Timber and Saw Mill,
Rep. by its Proprietor,
P.Xavier,
No.31, Cauvery Nagar South,
Pudukkottai Road,
Thanjavur - 613 005. ... Petitioner

Vs.

The Commercial Tax Officer,
Thanjavur II Assessment Circle,
C.T.Buildings,
Sachidananda Mooppanar Road,
Thanjavur. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in TIN/33243822390/2007-2008 dated 28.11.2014 and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.K.Soundararajan
For Respondent : Ms.J.Padmavathi Devi,
Special Government Pleader.

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O R D E R

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

2. The writ petitioner is a timber dealer and he has registered himself with the respondent. The petitioner's premises was inspected by the enforcement wing on 25.11.2013. Based on the same, the respondent issued revision notice dated 12.02.2014. The petitioner filed their objections. After holding enquiry, the impugned order dated 28.11.2014 was passed. The operative portion of the impugned order reads as follows:-

> "In view of the above reasons, the objections raised by the dealers are overruled and the proposal as per pre-revision notice is confirmed. The dealers escaped turnover

for the year 2007-08 is determined and corresponding Tax/Sec-41 penalty are levied for the year 2007-08 as follows:-

Details	Turnover	Tax	Sec. 41 Penalty
a. Difference rate of tax levied at 12% on the sales turnover claimed at 0.5% u/s.3(4) of the Act.	Rs. 43,39,393- @ 12%	Rs. 5,20,727-	Rs. 3,439
b. Works contract taxable turnover liable to tax fixed	Rs. 7,86,678- @ 4% Rs. 5,24,452- @ 12.5%	Rs. 31,467- Rs. 65,557	
Taxable turnover re-fixed for the year 2007-2008 under TNVAT ACT 2006.	Rs. 56,50,523-	Rs. 6,17,751-	Rs. 3,439-
c. Exemption allowed towards labour and other like charges admissible	Rs. 5,61,913-	----	----
Total Turnover re fixed for the year 2007-2008.	Rs. 62,12,436-	Rs. 6,71,751-	Rs. 3,439-

		Tax	Sec. 41 Penalty
Due	:	Rs. 6,17,751-	Rs. 3,439-
Paid	:	Rs. 21,698-	Rs. ---
Balance	:	Rs. 5,96,053-	Rs. 3,439-

Demand notices in Form "O" and "RR" are issued for the same.

Challenging the same, this writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and wanted him to set aside the impugned order.

4. Per contra the learned Special Government Pleader submitted that the impugned order does not call for any interference.

5. After going through the materials on record, it is seen that the petitioner had opted to pay tax on compounded basis under Section 3(4) of the Act. The said facility will be available to the petitioner, only if their turnover during the period in question did not exceed Rs.50,00,000/-. The stand of the respondent is that this

ceiling limit was breached by the petitioner herein.

6. The petitioner's counsel would point out that there is a calculation error committed by the respondent. The petitioner's counsel would point out that the respondent have erroneously included a sum of Rs.18,73,043/- paid by the Forest Department. The respondent has proceeded on the premise that there was a works contract between the petitioner and the Forest Department and that therefore applying the statutory definitions set out in Section 2 (33) of the TNVAT Act 2006, the said amount would also be treated as sale consideration. But the petitioner's counsel would point out that the transaction between the petitioner and the Forest Department would not constitute works contract. According to him, the amount received by the petitioner would only constitute labour charges. In fact in the typed set of papers, the certificate issued by the District Forest Officer, Thanjavur Division, Thanjavur, indicating the nature of payment has been enclosed.

7. The learned Special Government Pleader would contend that this certificate was not produced at the time of inspection. But then, there is no merit in this objection and even according to the respondent, the inspection was conducted on 25.11.2013 and 26.11.2013. The certificate was issued by the Forest Department on 04.04.2014. The certificate is subsequent in point of time. Therefore, it could not have been produced at the time of inspection. Since the dealer has enclosed a copy of the said certificate along with their objections, the respondent could have simply summoned the officials of the Forest Department and examined them. The petitioner has to produce the copies of the agreement between them and the Forest Department. After appreciating the documentary evidence, the finding could have been rendered as to whether the agreement between the petitioner and the Forest Department is a works contract or a mere labour agreement. The respondent brushed aside the same by questioning the genuineness of the certificate issued by the District Forest Officer and that it has not been proved by him well in advance at the time inspection. I have already pointed out that this objection is absolutely baseless.

8. Since a relevant aspect of the matter has not been taken into consideration by the respondent, the order impugned in this writ petition stands quashed and the matter is remitted to the file of the respondent to pass orders afresh in accordance with law, after holding enquiry. In the said enquiry, it is open to the petitioner to produce all the relevant materials to show that the transaction in question was not works contract between the petitioner and the Forest Department. The respondent shall summon the Forest Department officials also.

9. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// 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 Commercial Tax Officer,
Thanjavur II Assessment Circle,
C.T.Buildings,
Sachidananda Mooppanar Road,
Thanjavur.

W.P.(MD)No.1173 of 2015
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MJ(CO)
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