BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)Nos.1066 & 1067 of 2022
and
C.M.P(MD)Nos.8544 to 8547 of 2022

W.A(MD)No.1066 of 2022:

M/s.Sri Laxmi Timbers Private Limited,
Represented by its Authorized Signatory,
Prakash Patel,
No.13-A, Shencottai Road,
Tenkasi,
Tenkasi District – 627 811. ... Appellant / Petitioner

Vs.

State Tax Officer (Collection and Arrears),
Tirunelveli. ... Respondent / Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the common order of the learned single Judge made in W.P(MD)No. 16073 of 2021 dated 08.09.2021 and to allow the above Writ Appeal.

For Appellant : Mr.G.Dhanamadhri

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

W.A(MD)No.1067 of 2022:

M/s.Sri Laxmi Timbers Private Limited,
Represented by its Authorized Signatory,
Prakash Patel,
No.13-A, Shencottai Road,
Tenkasi,
Tenkasi District – 627 811. ... Appellant / Petitioner

Vs.

State Tax Officer (Collection and Arrears),
Tirunelveli. ... Respondent / Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the common order of the learned single Judge made in W.P(MD)No. 16074 of 2021 dated 08.09.2021 and to allow the above Writ Appeal.

For Appellant : Mr.G.Dhanamadhri

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON JUDGMENT

(Judgment of the Court was made by G.R.Swaminathan J.)

The appellant herein filed W.P(MD)Nos.16073 and 16074 of 2021 challenging the assessment orders made by the respondents for the assessment years 2017-18 and 2018-19. The writ petitions were dismissed vide order dated 08.09.2021 by the learned single Judge. Aggrieved by the same, these Writ Appeals have been filed.

2.The learned counsel appearing for the appellant strongly submitted that there has been a gross violation of the principles of natural justice. He submitted that the appellant had shut down their business in the year 2018 itself. And that is why they prayed for adequate opportunity and time to produce the relevant records. He pointed out that the impugned proceedings took place when the COVID pandemic was at its peak. He placed reliance on the order dated 12.06.2023 made in W.P(MD)No.14407 of 2021 etc batch. A learned Judge of this Court had granted relief to the appellant herein in respect of some other orders without stipulating any condition. The learned counsel requested this Court to adopt the very same approach in this case also.

3.Per contra, the learned Additional Government Pleader appearing for the respondent submitted that the impugned order does not call for interference.

4.The learned single Judge while dismissing the writ petitions had held as follows:

> *"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."*

We are of the view that the factual and legal analysis made by the learned single Judge cannot be faulted.

5.It is well settled that in fiscal matters, the writ Court should be very reluctant to interfere when the assessee has not exhausted the alternative statutory remedies. In fact, we called upon the learned counsel for the appellant to take instructions as to whether the assessee would offer to make some payment. The matter was adjourned on more than one occasion for this purpose.

6.The learned counsel for the appellant submitted that the assessee's bank account has become NPA and that their properties have been attached, and therefore they are not in a position to comply with any terms that may be stipulated by this Court.

7.We are of the view that the assessee has not made out any case for by-passing the alternative remedy of appeal. The order impugned in these writ appeals are sustained.

8.These Writ Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[G.R.S., J.] [M.J.R., J.]
24.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
MGA

To

State Tax Officer (Collection and Arrears),
Tirunelveli.

G.R.SWAMINATHAN,J.

AND

M.JOTHIRAMAN, J.

MGA

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