IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.10022 to 10025 of 2017
and W.M.P.Nos.11029 to 11032 of 2017

Tvl.Copral Insulated Conductors Pvt. Ltd.
Rep. by its Manager - Administration.
Plot No.12, SIPCOT Phase II,
Hosur - 635 109. .. Petitioner

Vs.

The Assistant Commissioner (CT),
Hosur - North, Hosur. .. Respondent

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the respondent in TIN Nos.33083320600/2011-12, 33083320600/2012-13, 33083320600/2013-14 and 33083320600/2014-15 dated 30.01.2017, respectively and quash the same.

For Petitioner : M/s.Adithya Reddy
For Respondent : Mr.K.Venkatesh, G.A.

COMMON ORDER

These Writ Petitions are filed challenging the order of assessment dated 30.01.2017, individually passed in respect of the assessment years 2011-12 to 2014-15. By consent of parties, the main Writ Petitions are taken up for disposal, since the issue involved herein lies in a narrow campus.

2. Heard, the learned counsel for the petitioner and the learned Government Advocate for the respondent.

3. It is submitted by the learned counsel for the petitioner that the impugned orders were passed in violation of principles of natural justice, as no opportunity of personal hearing was given to the petitioner, though a request was made to that effect. He further submitted that the Assessing Officer has not considered the objections raised by the petitioner in detail. It is his further contention that the Assessing Officer has passed a non-speaking order, as he rejected the objection raised by the petitioner by a single line finding. Therefore, he contended that on this ground also the impugned orders are liable to be set aside.

4. Per contra, the learned Government Advocate has submitted that it is not correct to state that the petitioner was not given the opportunity of personal hearing and on the otherhand personal hearing given to the petitioner on 30.10.2015 was not utilised by them and therefore there is no violation of principles of natural justice. The learned Government Advocate further though sought to sustain the impugned orders on merits as well, he is fair enough to accept the position that the Assessing Officer has not given a finding in detail while confirming the proposal in respect of the incorrect claim of ITC and sales effected to SEZ units.

5. There is no dispute to the fact that before passing the order of assessment, the petitioner was issued with a notice of proposal for each assessment year. It is also not in dispute that the petitioner was called upon to appear and produce documents on 30.10.2015. Therefore, it is evident that the Assessing Officer has fixed the date of personal hearing on 30.10.2015 and informed the same to the petitioner. But the question is as to whether the personal hearing was actually conducted on that day or not. Perusal of the communication dated 30.10.2015 sent by the petitioner and received by the Assessing Officer on the same day would show that the petitioner wanted another day for personal hearing, as they were not in a position to collect the documents, since their accounts officer was on medical leave. Such request

made by the petitioner and received by the respondent on the very same day, has neither been rejected nor accepted by the Assessing Officer, as admittedly he has not given any reply to the said request made by the petitioner. The Assessing Officer, having received the said request, ought to have communicated the petitioner about his decision made on such request. In the absence of any such communication, the petitioner is justified in presuming that they would get a communication from the Assessing Officer fixing the another date of personal hearing. Instead, the Assessing Officer has straight away passed the assessment order based on the objections already filed by the petitioner on 24.11.2014. When a personal hearing is sought for, the Assessing Officer has to provide such opportunity so as to enable the assessee to substantiate the contentions raised in the objection. Failure to provide such opportunity undoubtedly lead to the conclusion that the impugned action violated the principles of natural justice. Apart from the above fact, perusal of the impugned order would further show that the same came to be passed without application of mind to the objections already raised by the petitioner, as the Assessing Officer has chosen to reject the objections simply by stating that they are not acceptable, without there being any detailed discussion and finding. Therefore this Court is of the view that the assessment order passed in respect of each assessment years, in so far as the issue wherein proposal was confirmed, cannot be sustained.

6. Accordingly, all these petitions are allowed and the impugned orders of assessment insofar as confirming the proposal are set aside. Consequently, the matter is remitted back to the Assessing Officer to pass fresh order of assessment insofar as the issues, which were confirmed by him. The Assessing Officer shall also give personal hearing to the petitioner on due intimation. Whole exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected W.M.Ps. are closed.

01.06.2017

Speaking/Non Speaking
Index : Yes/No
pvs

To
The Assistant Commissioner (CT),
Hosur - North, Hosur.

K.RAVICHANDRABAABU,J.

pvs

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