IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.7023 of 2017
and
WMP.No.7651 & 7652 of 2017

Tvl. Shree System Enterprises
Represented by its Proprietrix,
Mrs.K.K.Premkumari ... Petitioner

Vs.

The Assistant Commissioner (CT)
Korattur Assessment Circle,
No.52/98, 2nd Floor,
Yadaval Street, Padi,
Chennai-600 050. ... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records on the files of the respondent in TIN/33371440338/2012-13 dated 28.10.2016 and connected notice RC.No."L"SI.No.46/2016-2017/66 dated 13.02.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (Tax)

O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader, takes notice for the respondent. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 28.10.2016 and consequential demand notice dated 13.02.2017. The petitioner is a registered dealer in machinery and spares and for the assessment year 2012 - 2013, they were issued with pre-assessment notice on 23.04.2015

proposing to assess the difference in sales turnover @ 14.5% as escaped turnover. Accordingly, the petitioner was called upon to file the objections within fifteen days on receipt of such notice. Thereafter, the impugned order of assessment was passed not only by confirming the proposals made in the pre-assessment notice, but also by imposing penalty on the petitioner to the tune of Rs.1,12,831/-. Thereafter, consequential impugned notice of demand was issued on 13.02.2017.

3. The learned counsel appearing for the petitioner submitted that the order of assessment was passed by the Assessing Authority, also by imposing the penalty without there being any proposals for penalty in the pre-assessment notice, and hence it is not sustainable. Therefore, he submitted that the imposition of such penalty without putting the petitioner on notice, violates the principle of natural justice. Insofar as the confirmation of the proposals of the tax is concerned, it is contended by the petitioner that the pre-assessment notice was not brought to the knowledge of the petitioner, as the same was served on some un-authorized person and they came to know about the same only on receipt of the impugned demand notice dated 13.02.2017.

4. The learned Additional Government Pleader appearing for the respondent submitted that notice was issued to the petitioner, they failed to utilize the opportunity by filing their objections and hence the Assessing Officer cannot be found fault with the issuing of the order of assessment. However, he has not disputed the fact that the pre-assessment notice did not contain the proposal for penalty.

5. Heard both sides.

6. The petitioner challenges the order of assessment and consequential demand mainly, on two reasons. Insofar as the imposition of penalty is concerned, as claimed by the petitioner, it is seen that such imposition was made without there being any proposal made in the pre-assessment notice. It is needless to say that such imposition of penalty without a proposal, cannot be sustained. Insofar as imposition of tax is concerned, it is the contention of the petitioner that the pre-assessment notice was not served on the authorized person and however, such issuance of notice came to the knowledge of the petitioner only on receipt of the impugned demand notice. In any event, as this Court is of the view that the matter needs to be remitted back to the respondent for considering the issue once again, after issuing the notice of proposal for imposing penalty and after hearing the parties and to pass fresh orders, the impugned order and the consequential demand notice are liable to be set aside.

7. Accordingly, the writ petition is allowed and the impugned order of assessment and demand notice are set aside and the matter is remitted back to the Assessing Officer for fresh consideration, who shall issue appropriate notice to the petitioner and also give opportunity of personal hearing, while considering the objections raised by the petitioner. Thereafter, the Assessing Officer shall pass order of assessment, on merits and in accordance with law. Whole exercise shall be done by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (CT)
Korattur Assessment Circle,
No.52/98, 2nd Floor,
Yadaval Street, Padi,
Chennai-600 050.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.18087

W.P.No.7023 of 2017

KGK(CO)
CA(07/04/2017)