IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRA BABU

W.P.No.6391 of 2017
and
W.M.P.No.6894 of 2017

M/s.Gee Gee Kay Pvt. Ltd.,
Rep. by its General Manager Fin.P.Balasubramanian
No.96, Nelson Manickam Road,
Aminjikarai,
Chennai- 600 029 ...Petitioner

Vs.

The Assistant Commissioner (CT)
Arumbakkam Assessment Circle,
No.F-50, 2nd Floor, 1st Avenue,
Anna Nagar (East)
Chennai 600 102. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for records on the file of the respondent in TIN:33371462745/2010-11 dated 13.01.2017 and quash the same as illegal against the principles of natural justice and fair play and direct the respondent not to reverse the claim of ITC in respect of stock transfer effected out of purchases other than local purchase.

For Petitioner : Mr.P.Prithvi Chopda

For Respondent : Mr.K.Venkatesh, Govt. Advocate

O R D E R

The petitioner is aggrieved against the order of assessment dated 13.01.2017 passed in respect of assessment year 2010 - 2011.

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

3. There are two issues before the Assessing Officer, which culminated into passing of the impugned assessment order. They are ITC reversal under sections 19(5)(c) and 19(4) of the Tamil

Nadu VAT Act. The main grievance of the petitioner in this writ petition is that the Assessing Officer has not given sufficient opportunity to the petitioner including personal hearing to substantiate their contentions raised in the reply dated 06.01.2017. Therefore, it is contended that the impugned order violates the principles of natural justice. In support of the above contention, the learned counsel for the petitioner invited this Court's attention to the reply dated 06.01.2017 filed by the petitioner in response to the notice dated 26.12.2016. A perusal of the said reply clearly indicates that the petitioner wanted an opportunity of personal hearing to explain their objections with connected records, on hearing from the respondent. They also specifically stated that they will produce the other records, if any, after hearing from the Assessing Officer. However, the Assessing Officer has chosen to construe the date of filing of such objections as the date of personal hearing and proceeded to pass the impugned Assessment Order also by specifically stating that even if the records are produced, he will not be in a position to verify since under the scheme of self declaration and deemed assessment such course of verification is not possible. I do not think that the said conclusion arrived by the Assessment Officer can be justified, especially, under the facts and circumstances of the present case.

4.Admittedly, the petitioner has filed their reply on 06.01.2017, in which, they specifically sought for personal hearing for production of the records. The receipt of such objection is also admitted in the impugned order. Therefore, it is evident that in pursuant to such request made by the petitioner, the Assessing Officer, has not given further opportunity of personal hearing, more particularly, for production of the records. Needless to say that the Assessing Officer will be in a position to know as to whether those records are sufficient or not only when they are produced before him on the date so fixed by him and intimated to the petitioner. In this case, without even calling upon the petitioner to produce those documents, the Assessing Officer has come to the conclusion as though the verification of those documents are not possible. Therefore, I am of the view that the Assessing Officer has to redo the whole exercise once again by hearing the petitioner and verifying the documents to be produced by them.

5. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer for passing a fresh order of assessment after giving an opportunity of personal hearing to the petitioner. Once the date is fixed and informed to the petitioner, the petitioner shall produce all the relevant documents in their possession to substantiate their contention. On production of those documents, the Assessing Officer shall

verify the same and take a decision in accordance with law. Consequently, the Assessing Officer has to pass a fresh order of assessment within a period of four weeks from the date of receipt of the documents and completion of personal hearing. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

vsi/kas

To

The Assistant Commissioner (CT)
Arumbakkam Assessment Circle,
No.1-50, 2nd Floor, 1st Avenue,
Anna Nagar (East)
Chennai 600 102.

+1cc to Mr.T.Pramod Kumar Chopda, Advocate in sr.no.43308
+1cc to Special Government Pleader(Taxes) in sr.no.43555

W.P.No.6391 of 2017

KJI(CO)
NR 30/06/2017