In the High Court of Judicature at Madras

Dated: 08.03.2017

Coram

The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.5717 of 2017
and
W.M.P.Nos.6100 and 6101 of 2017

Tvl.Vikranth Construction,
Rep. By its Proprietor,
T.S.No.421, Guruvappa Naidu Street,
Pudhupalayam, Cuddalore-1. .... Petitioner

Vs.

The Deputy Commercial Tax Officer (CT),
Cuddalore Town. ...Respondent

Prayer:Writ petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the Order of Assessment passed by the respondent in TIN 33054384173/2015-16 dated 15.12.2016 and quash the same as being passed without authority of law and in violation of principles of natural justice and to further direct the respondent to pass fresh orders in accordance with law after affording the petitioner an opportunity of personal hearing as contemplated under Section 22(4) of the Act.

For Petitioner : Mr.A.Ravichandran

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

This writ petition is filed challenging the order of assessment dated 15.12.2016, mainly by contending that the same violates the principles of natural justice, as the petitioner was not given sufficient opportunity to put forth their case by filing supporting documents.

2.Mr.K.Venkatesh, learned Government Advocate takes notice for the respondent. Since the issue involved in this case is lying in a narrow campus, the main writ petition itself is taken up for final disposal at the admission stage.

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3.The petitioner is an assessee under the respondent and a notice dated 14.10.2016, in respect of the Assessment Year 2015-2016 under Section 22(4) of the Tamil Nadu VAT Tax Act, 2006 for best judgment assessment was issued to the petitioner. In the said notice, the petitioner was called upon to appear before the Assessing Officer along with their written objections on 07.11.2016. On the said date, the petitioner appeared and had given a letter in writing that for production of certain supporting documents, they should be given 20 days time. Thereafter, the impugned order of assessment came to be passed imposing the tax and penalty.

4.The learned counsel for the petitioner submitted that when the petitioner has appeared on 07.11.2016 and made a request for granting 20 days time to produce the supporting documents, the respondent ought to have communicated the decision taken on the petitioner's application dated 07.11.2016 in writing. Therefore, the learned counsel contended that passing an order of assessment without either informing the petitioner about the next date of hearing or passing an order rejecting the request for adjournment, cannot be sustained, as it violates the principles of natural justice. In support of his submission, the learned counsel relied on the decision of the learned Single Judge of this Court reported in (2011) 42 VST 61 (Mad), Esjyapee Impex (P) Ltd vs. Commercial Tax Officer.

5.Per contra, learned Government Advocate appearing for the respondent submitted that when an order of assessment came to be passed only after waiting for 20 days as requested by the petitioner and when the petitioner has not filed any documents within such time, the Assessing Officer cannot be found fault with in passing the impugned order of assessment. Therefore, the learned Government Advocate submitted that there is no violation of principles of natural justice.

6.Heard both sides.

7.It is seen that in pursuant to a notice issued under section 22(4) of the said Act dated 14.10.2016, the petitioner appeared before the respondent on the date so fixed and had given a request for granting 20 days time for producing certain supporting documents. Such request made by the petitioner on 07.11.2016 is admitted by the respondent in the assessment order itself. However, it is stated therein that the petitioner has not produced the supporting documents within 20 days.

8.Needless to say that when a request is made by the petitioner seeking for extension of time by way of writing, such request has to be considered and decided either by accepting or rejecting the same and such decision has to be duly communicated to the assessee by fixing a next date of hearing so as to enable

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such assessee to be prepared for appearance on that day for completion of the assessment proceedings. In the above referred decision relied on by the learned counsel for the petitioner cited supra, the very same issue was considered and found that the request for extension either granted or rejected should be intimated then and there. In this case, admittedly, no such intimation was given to the petitioner, even assuming that the request of the petitioner was accepted by the Assessing Authority. Needless to say that unless the petitioner is informed of the decision on their request for extension, they cannot be expected to proceed further either this way or that way. Therefore, I find that the assessment order passed without intimating the decision taken on the request for extension of time, is in violation of the principles of natural justice and therefore on that ground alone, the assessment order has to be set aside, without going into any of the merits of the assessment. Accordingly, the writ petition is allowed. The impugned order of assessment is set aside and the matter is remitted back to the respondent for passing fresh order of assessment after giving due opportunity of hearing to the petitioner. The petitioner should cooperate with the assesment proceedings without dragging the matter by way of filing applications one after another seeking for extension without there being any justifiable cause. The respondent shall intimate the next date of hearing to the petitioner. On receipt of such notice, the petitioner should appear with all necessary documents and allow the Assessing Officer to complete the assessment proceedings. Entire exercise shall be done by the respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The Deputy Commercial Tax Officer (CT),
Cuddalore Town.

+1 cc to Mr.A.Ravichandrabaabu,advocate,sr.15112

+1 cc to Spl.Govt.Pleader,sr.15000

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