

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.6868 to 6874 of 2017

And

W.M.P.Nos.7447 to 7453 of 2017

M/s. Albis Constructions Pvt. Ltd.
No.19, Pantheon Apartments,
Egmore, Chennai – 600 008.

... Petitioner in W.P.No.6868/2017

Vs.

The Assistant Commissioner (CT)(FAC)
Egmore Assessment Circle,
Taluk Office Building ,
Spurtank Road, Chetpet,
Chennai – 600 031

... Respondent in W.P.No.6868/2017

Prayer in W.P.No.6868 of 2017:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in the impugned Order TIN/33430440720/2007-08 dated 31.01.2017, quash the same as it is violative of principles of natural justice and mechanically passed without considering any of the documents produced by the petitioner in response to the pre-assessment notice.

For Petitioner : Mr.V.S.Manoj

For Respondent : Mr.S.Kanmani Annamalai

Additional Government Pleader

(Taxes)

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) takes notice for the respondent and by consent of parties, the main writ petitions are taken up for final disposal at the admission stage itself, as the issue involved in these cases lies in a narrow compass.

2.These petitions are filed challenging the assessment orders in respect of assessment years 2007-08 to 2013-14. The petitioner is a registered dealer under the provisions of Tamil Nadu Value Added Tax Act, 2006 and also under the provisions of Central Sales Tax Act, 1956.

3.The main grievance of the petitioner in these writ petitions is that the respondent has passed the impugned orders of assessment without considering the material supplied by the petitioner along with their reply to the notice. It is their further contention that had there been an opportunity of personal hearing, the petitioner would have satisfied the respondent by explaining in detail, with the supportive documentary evidences as to how the proposals are not correct.

4.The learned counsel for the petitioner pointed out that though the pre-assessment notices and revised notices sent on 03.03.2015 and 09.12.2016 respectively, in respect of each assessment years indicated as though the petitioner is entitled for personal hearing, the respondent has not afforded such hearing to the petitioner by indicating the date of such hearing, by issuing further notice to the petitioner to that effect. Therefore, he contended that without any intimation to the petitioner by fixing the date of personal hearing, the petitioner cannot be expected to appear before the respondent for availing the opportunity of personal hearing.

5.The learned counsel for the petitioner further submitted that as per the Circular No.7/2014 dated 03.02.2014, issued by the Principal Secretary/ Commissioner of Commercial Taxes, Chepauk, Chennai - 5, the respondent is duty bound to afford a personal hearing to the petitioner, whether the petitioner has asked for the same or not. Therefore, he submitted that the impugned orders are liable to be set aside solely, on the ground of violation of principles of natural justice.

6.The Additional Government Pleader (Taxes) appearing for the respondent submitted that the petitioner is not justified in contending

that they were not afforded an opportunity of personal hearing especially, when the pre-assessment notice and the revised notice has specifically indicated that the petitioner is afforded with an opportunity of personal hearing, if they desire to have the same. Therefore, he contended that when the petitioner has not opted to appear for personal hearing, they cannot contend before this Court, as though the principles of natural justice is violated.

7. Heard both sides.

8. The petitioner is aggrieved against the orders of assessment passed in pursuant to the pre-assessment notices and revised notices dated 03.03.2015 and 09.12.2016. Perusal of the said notices would show that the respondent has called upon the petitioner to file their objections within fifteen days of receipt of such notices, also by indicating that the petitioner is further afforded with an opportunity of being personally heard, if they desire, within the above allowed notice time. Though such notice was issued to the petitioner, the fact remains that no further notice was issued to the petitioner indicating as to the date of such personal hearing, even though the petitioner has furnished their objections to the said notices within the time stipulated therein.

9. At this juncture, it is useful to refer to the Circular issued by the office of the Principal Secretary/ Commissioner of Commercial Taxes, Chepauk, Chennai – 5 in Circular No.7/2014, wherein, it is observed as follows:

"a) Passing of Orders:

Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process.

i) After issue of notice calling for the objections, if any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may be only if, there exists a genuine reason.

*ii) Objections filed by the dealer on the pre assessment/revision notices shall be examined in each and every issue meticulously and **speaking order** shall be passed addressing the objections raised, in short, the speaking order which is complete shall be passed.*

iii) As the provision in the TNVAT Act

stipulates the conditions of granting of personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not."

10. Going by the above Circular issued by the Department and considering the fact that the pre-assessment notices and revised notices suggested, as though the petitioner is entitled for a personal hearing, the question that is to be gone into and decided in this case is as to whether the petitioner was really afforded such opportunity. As I pointed out earlier, the respondent has not intimated the petitioner about the date of personal hearing in pursuant to the objections filed by them. When such being the factual position, the only conclusion that can be arrived is that the respondent though stated that an opportunity of personal hearing would be given to the petitioner, has, in fact, not afforded such opportunity to the petitioner by not informing the date of such hearing. Therefore, it is evident that the petitioner was not given such personal hearing and consequently, as rightly argued by the learned counsel for the petitioner, the impugned orders of assessment suffers on the ground of violation of natural justice.

11. Accordingly, this Court is satisfied to set aside the order of assessment only on the ground of violation of principles of natural justice, without going into any of the merits of the contentions raised by the parties on the orders of assessment. Consequently, the writ petitions are allowed and the impugned orders of assessment are set aside and the matter is remitted back to the respondent for passing fresh orders of assessment, after affording opportunity of personal hearing to the petitioner by indicating the exact date of such hearing. After hearing the petitioner and considering all the aspects, the respondent shall pass fresh orders of assessment on its own merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

12. The writ petitions are allowed as indicated above. No costs. Consequently, the connected miscellaneous petitions are also closed.

21.03.2017

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Speaking Order / Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

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