IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.6903 & 6987 of 2017
and
W.M.P.Nos.7497 & 7605 of 2017

Ambience Constructions & Interiors
No.18/26, Loganathan 2nd Street,
Jayam Mansion, Choolaimedu
Chennai-600 094.
Rep. by its Proprietor ...Petitioner
(in WP Nos.6903 & 6984 of 2017)

Vs.

Commercial Tax Officer
Vadapalani Assessment Circle
No.1, Greams Road,
Chennai-600 006.
... Respondent
(in WP Nos.6903 & 6984 of 2017)

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings leading to passing of the Revised Assessment Orders vide TIN/33431466398/2013-14 & TIN/33431466398/2014-2015, dated 27.09.2016, quash the same and direct the respondent to pass fresh revised assessment order after providing an opportunity of reply and personal hearing.

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

COMMON ORDER

Both these writ petitions are filed by one and the same petitioner, challenging the orders of assessment passed in respect of assessment years 2013-2014 & 2014-2015.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader (Tax) appearing for the respondent.

3. These writ petitioners are filed challenging the orders of assessment, mainly by contending that the respondent failed to adhere to the principles of natural justice in a strict sense, by not giving an opportunity of personal hearing, before finalizing the orders of assessment. In support of such contention, the learned counsel appearing for the petitioner relied on a circular dated 03.02.2014 issued by the Office of the Principal Secretary / Commissioner of Commercial Taxes, Chepauk, Chennai-5 in Circular No.7/2014. It is the specified contention of the petitioner that though they have filed their objections in pursuant to the notice of proposal raising very many points in their objections for dropping the proposal, the respondent has not considered the same in a proper manner and on the other hand, confirmed the proposal, without affording an opportunity of personal hearing to the petitioner. He further contended that the respondent ought to have given such opportunity notwithstanding the fact, whether the petitioner sought for such hearing or not, as provided under the Circular No.7/2014 dated 03.02.2014.

4. The learned Additional Government Pleader submitted that the objections raised by the petitioner was considered by the Assessing Officer and the orders of assessment were passed only on such consideration. However, he fairly submitted that the petitioner was not given an opportunity of personal hearing.

5. Upon hearing the learned counsel appearing for the petitioner and considering the facts and circumstances of the case, it is evident that the Assessing Officer has not granted an opportunity of personal hearing to the petitioner, before passing the orders of assessment. I myself considered the scope on Circular No.7/2014 in WP.No.6868 to 6874 of 2017 dated 21.03.2017 wherein at Para 9, 10 & 11, it has been observed as follows:-

> "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-6 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 it, 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 condition 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, infact, 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."

6. Therefore, this Court is satisfied, that the present writ petitions are also covered by the above decision made by this Court, as the respondent has not adhered to the principles of natural justice in its strict sense. Accordingly these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matters are remitted back to the respondent for passing fresh orders of assessment after giving due opportunity of personal hearing to the petitioner. Such exercise shall be done by the respondent within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any view, on merits of the assessment orders, as it is for the Assessing Officer, to consider the same on merits and pass orders in accordance with law. It is also open to the petitioner to make any additional submissions / objections at the time of personal hearing. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To
The Commercial Tax Officer
Vadapalani Assessment Circle
No.1, Greams Road,
Chennai-600 006.

+1cc to Mr.S. Sathiyanarayanan, Advocate, S.R.No.18911
+1cc to the Spl.Government (Taxes)Pleader, S.R.No.19049

svi(CO)
md(10/04/2017)