

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.4960 to 4964 OF 2017

and

WMP.Nos.5186 to 5190 of 2017

M/s.Vetrivel Constructions,
Rep. By its Proprietor,
4/B-42, Karthikeyan Street,
Periyar Nagar,
Chennai 600 082.

...Petitioner in all the W.Ps.
vs.

Commercial Tax Officer,
Perambur Assessment Circle,
Chennai 600 099.

...Respondent in all the W.Ps.

COMMON PRAYER:- Writ Petitions are filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in his proceedings of the assessment order in TIN 33801044390/2010-11, 2011-12, 2012-13, 2013-14, 2014-15 respectively dated 18.01.2017 and quash this assessment proceedings as illegal and direct the respondent to pass fresh orders by following the principle of law, after giving an opportunity of personal hearing.

For Petitioner in all the W.Ps. :M/s.C.Baktha Siromoni

For Respondent in all the W.Ps. :Mr.K. Venkatesh,
Government Advocate

COMMON ORDER

In all these writ petitions, the petitioner, who is one and the same, has challenged the order of assessment made for the years 2010-2011, 2011-12, 2012-13, 2013-14, 2014-15.

2. The main contention on which these writ petitions are filed is that the impugned assessment orders were passed in violation of the principles of natural justice as the respondent failed to provide an opportunity of personal hearing, inspite of asking for the same. By consent of parties, the main writ petitions themselves are taken up for final disposal at the

admission stage itself since the issue involved in these cases lies in a narrow campus.

3. Short facts that required for consideration in these writ petitions are as follows:

The petitioner is a registered dealer under the Tamil Nadu Value Added Tax, 2006, engaged in doing, Civil Construction Works. They filed the monthly returns for the assessment years 2010-2011 to 2014-2015 periodically. On 04.09.2015, the business place of the petitioner was inspected by the Enforcement Wing Officials followed by issuing a notice on 29.12.2015 proposing tax and penalty.

4. The respondent has stated that there is a difference in purchase figures as reported in the profit and loss accounts reconciled in the purchase turnover and the monthly returns of the petitioner for those assessment years. The respondent has also reported that there is mismatch of purchase with the details available in the website of the Sales Tax Department. Based on the web reports, the respondent has arrived at such conclusion. The petitioner filed a reply letter dated 31.12.2016 stating that there is no mismatch of any turnover. Apart from raising other objections, the petitioner has also sought for personal hearing. The respondent without affording an opportunity of personal hearing, has passed the impugned assessment orders.

5. Learned counsel appearing for the petitioner submitted that the respondent having informed the petitioner that they can avail the opportunity of personal hearing through their show cause notice dated 29.12.2015, ought to have given such hearing to the petitioner, especially when the petitioner has specifically requested for giving such opportunity through their letters dated 31.12.2016 and 11.01.2017. He further contended that the conclusion arrived by the respondent based on web report is again in violation of principles of natural justice as the petitioner was not furnished with those details of the report. In support of his contention regarding the question of personal hearing, the learned counsel relied on the Judgment of the Division Bench of this court in SRC Projects Private Limited Vs. Commissioner of Commercial Taxes, Chennai and Another reported in (2010) 33 VST 333 (Mad). In support of his submission regarding Web report, the learned counsel relied on an unreported revision of the learned Single Judge made in W.P.No.105/2016, etc., dated 01.03.2017.

6. Learned counsel for the petitioner also relied on the circular required by the Department dated 20.04.2001 to substantiate his contention regarding the personal hearing of

the petitioner.

7. Per contra, the learned Government Advocate appearing for the respondent submitted that the petitioner was given an opportunity of hearing by giving a show cause notice and the impugned orders of assessment were passed after considering the reply given by the petitioner. Therefore, he contended that there is no violation of principles of natural justice warranting interference by this court.

8. Heard both sides.

9. The petitioner is aggrieved against the orders of assessment passed in respect of five assessment years commencing from 2010 - 2011. There is no dispute to the fact that the petitioner was issued with notice dated 29.12.2016 calling upon them to file their objections with relevant documents in support of their claim. It is also not in dispute that the very same notice also informed the petitioner that they can avail the opportunity of being heard to represent the case before the assessing authority within 15 days time. However, the fact remains that the petitioner was not at all informed on what date they should appear for such personal hearing. The question as to whether the personal hearing is required to be given or not is already considered by the Department itself in circular dated 20.04.2001 where in it is stated as follows:

"2. Fair opportunity is to be given to the assessee and judicial consideration given to the representations, evidences and materials furnished by him. But personal hearing need not be given unless the status requires it (eg. Section 22 (2) or the assessee asks for it."

In this case evidently the petitioner through his letter dated 31.12.2016 and 11.01.2017 specifically sought for personal hearing.

10. The Division Bench of this court had an occasion to consider the very circular and in its decision reported in (2010) 33 VST 333 (Mad), it has been observed as follows :

"This court, therefore, holds that the provision of section 16(1)(a) of the said Act has to be construed in accordance with the said circular which is by way of contemporanea expositio. So when a specific demand is made for personal hearing the reasonable opportunity of showing cause should include the same in the interest of fairness in procedure."

From the above decision of the Division Bench of this court,

it is clear that when the assessee asks for personal hearing, the same should be given by the assessing authority. In this case, the assessing authority himself though has offered such opportunity as could be seen from the notice dated 29.12.2016 itself, unfortunately, has not subsequently communicate the date of such personal hearing, especially when the petitioner has specifically made such request through their communications dated 31.12.2016 and 11.01.2017. In both those communications, the petitioner has specifically requested the assessing authority to fix the date of hearing for production of accounts and returns. The fact remains that the assessing authority, even after receipt of those communications, has not given such opportunity of personal hearing to the petitioner and on the other hand, passed the impugned order of the assessment based on the reply submitted by the petitioner already.

11. In my considered view, such course of action adopted by the assessing authority is not in strict compliance of the principles of natural justice, more particularly, in the light of the circular issued by the Department itself as referred supra and the decision made by the Division Bench reported in (2010) 33 VST 333 (Mad). Therefore, on that score, the impugned assessment orders are to be set aside and the matter be remitted back to the assessing authority to pass fresh assessment order after giving an opportunity of personal hearing to the petitioner.

12. The Learned counsel for the petitioner further submitted that the very order of the assessment based on the web report again is not in consonance with the principles of natural justice as the details of such report are not furnished to the petitioner. In support of such contention, the learned counsel relied on the judgment of the learned Single Judge of this court made in W.P.105 of 2016 dated 01.03.2017 and batch cases.

13. Since this court is inclined to set aside the order of assessment and remitted the matter back to the assessing authority, it is open to the petitioner to place all the grounds including the supporting decisions in their favour before the assessing authority. Needless to say that the assessing authority before passing the order afresh shall consider all the objections raised by the petitioner and accordingly, all the writ petitions are allowed and consequently, the connected miscellaneous petitions are closed. The impugned orders of assessment are set aside solely on the ground of principles of natural justice. Consequently, the matter is remitted back to the respondent for passing fresh order of assessment, after

giving an opportunity of personal hearing to the petitioner. Such exercise shall be done by the respondent on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv

To

The Commercial Tax Officer,
Perambur Assessment Circle,
Chennai 600 099.

+1cc to Mr.Bakthasiromani, Advocate, S.R.No.15907
+1cc to the Government Pleader, S.R.No.15641

PA(CO)
RS(24/03/2017)

W.P.No.4960 to 4964 OF 2017
and
WMP.Nos.5186 to 5190 of 2017

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