IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2017

Coram

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.3216 to 3220 of 2017
and
W.M.P.Nos. 3161 to 3165 of 2017

Unique Marmocham Pvt.Ltd.,
represented by tis Authorised Signatory
Niraj Mittal
No.78/11, Chennapalli Village, Krishnagiri Main road,
Shoolagiri,
Hosur-635 117. ...Petitioner in all the W.Ps.

Vs.

1. The Assistant Commissioner (CT),
   Hosur (South),
   Hosur.

2. The Government of Tamil Nadu,
   rep. by its Secretary,
   Comercial Taxes Department,
   Fort St.George,
   Chennai - 600 009. ..Respondents in all the W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the order passed by the first respondent in Order Nos.TIN 33153365812/2010-11, TIN 33153365812/2011-12, TIN 33153365812/2012-13, TIN 33153365812/2013-14 and TIN 33153365812/2014-15 respectively dated 03.11.2016 and quash the same.

For Petitioner : Mr.J.Shankarraman

For Respondents: Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON ORDER

All these writ petitions are filed challenging the order of assessment dated 03.11.2016 in respect of the assessment years 2010-11 to 2014-15.

2. The only grievance of the petitioner before this Court is that the Assessing Officer has not given personal hearing to the petitioner before passing the impugned orders and therefore, it violates the principles of natural justice.

3. Learned counsel appearing for the petitioner after inviting this Court's attention to Circular No.7/2014 dated 03.02.2014 issued by the Principal Secretary, Commissioner of Commercial Tax, Chennai-5, submitted that affording an opportunity of personal hearing to the petitioner is the duty cast upon the Assessing Officer, whether such opportunity was sought for or not by the petitioner. The respondent in the counter affidavit admitted that no personal hearing opportunity was given to the petitioner, since there was no request made for such personal hearing.

4. A perusal of the above said circular would show that it is the duty of the Assessing Officer to intimate such right to the petitioner and afford such opportunity. For proper appreciation, the relevant portion of the said circular reads 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.
>
> 1. After issue of notice calling for the objections, if any further time is requested by the dealer within the 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.
>
> 2. 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.
>
> 3. As the provision 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.

5. The said circular was relied on by this Court in very many cases earlier and one such decision is made in W.P.No.3727/2017 dated 15.02.2017 for the purpose of remitting the matter for affording an opportunity of personal hearing.

6. Learned Additional Government Pleader fairly submitted that the petitioner was not given personal hearing and consequently, the matter may be remitted back to the Assessing Officer for redoing the assessment after providing such personal hearing.

7. Considering the above stated facts and circumstances and the admitted position that the personal hearing was not given to the petitioner and considering the scope of Circular No.7/2014 dated 03.02.2014, I am of the view that the matter has to go back to the Assessing Officer for redoing the assessment after providing personal hearing to the petitioner. Accordingly, all these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Officer for redoing the assessment after affording an opportunity of personal hearing to the petitioner. The whole exercise shall be done by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any view on the merits of the matter as it is for the Assessing Officer to consider and decide afresh. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

vsi

To

1. The Assistant Commissioner (CT),
Hosur (South),
Hosur.

2. The Secretary,
Government of Tamil Nadu,
Commercial Taxes Department,
Fort St.George,
Chennai - 600 009.

+1cc to Mr.J.Shankarraman,Advocate sr.41932

+1cc to Special Government Pleader(Tax),sr.42268

+4cc to Mr.J.Shankaraman,Advocate sr.41932(3/7/2017)

W.P.Nos.3216 to 3220 of 2017

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ss(22/6/2017)