IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM

The Hon'ble Mr. Justice T.S.Sivagnanam

W.P.Nos.33608 to 33611 of 2017
and
W.M.P.Nos.37168 to 37171 of 2017

Balaji Timber & Plywoods
Represented by its partner
K.Gopal Rao
200, Demellows Road
Choolai, Chennai 600 112. .. Petitioner in all W.Ps.

..Vs..

The Assistant Commissioner (ST),
Choolai Assessment Circle,
Second Floor, Palaniappa Maligai,
Greams Road, Chennai 6. .. Respondent in all W.Ps.

Prayer in all W.Ps.
Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in TIN 33390500203/2012-13, 2013-14, 2014-15 and 2015-16, respectively, dated 01.12.2017, and to quash the same with the direction to the respondent to consider the objections.

For Petitioner in all W.Ps. : Mr.R.Kumar
For Respondent in all W.Ps. : Mr.K.Venkatesh
Government Advocate

C O M M O N O R D E R

Heard Mr.R.Kumar, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate, accepting notice on behalf of the respondent. With consent on either side, these Writ Petitions are disposed of at the admission stage. Added to that, there are certain glaring errors in the impugned orders. Therefore, this Court is of the considered opinion that the matters requires to be re-considered by the Assessing Officer.

2. The respondent proposed to revise the assessment by issuing revision notices, dated 03.05.2017, 29.08.2017, 25.10.2017 and 24.11.2017. The petitioner have submitted their objections, dated 20.09.2017, 05.10.2017, 30.10.2017 and 31.10.2017. On receipt of the objections, the respondent afforded an opportunity of personal hearing on 24.112017. The respondent has handed over invoice-wise mis-match details to the dealer/petitioner, and the dealer requested time for submitting objections. However, the respondent, without receiving the objections, has completed the assessment by passing the impugned assessment orders.

3. In the impugned orders, it has been stated that the petitioner promised to file their reply on 29.11.2017, which has been stoutly refuted by the petitioner, stating that, at no point time, they promised that they will file reply on any particular date. In fact, the petitioner filed the reply on 04.12.2017, which was acknowledged by the Assessing Officer himself, by endorsing in the Letter Delivery Book. Therefore, it is the case of the petitioner that, if the impugned orders had already been passed, much prior to 04.12.2017, the respondent should not have received the objections filed by the petitioner on 04.12.2017. Therefore, the petitioner would contend that, there is no possibility that the impugned orders are anti-dated.

4. Be that, as it may, on a perusal of the impugned orders, it is seen that the revision of assessment is based upon the information culled out from the Internet website. If that be so, then, the petitioner should be afforded an opportunity to rebut the same, and in this regard, since there was no proper guidelines framed by the respondent/Commercial Tax Department, this Court, in the case of JKM Graphics Solutions Pvt. Ltd., Vs. Commercial Tax Officer, Vepery Assessment Cirlce, Chennai) reported in 2017 99 VST 343 (Mad) has laid down certain guide lines, as to how, the Assessing Officer should proceed to consider the case, where, mis-match is based on the details culled out from the Internet website. However, this exercise has not been done in the petitioner's case, since the objections filed were not on record. That apart, the respondent has made an observation that the petitioner has admitted certain facts before the Enforcement Wing Officers, at the time of inspection. Even assuming that, there were such admissions, if the revision notice was issued by the Assessing Officer, and the dealer filed a reply, the Assessing Officer, being an independent Authority, is bound to consider the reply, independently apply his mind, and take a decision on merits, and he cannot be solely guided by the report of the Enforcement Wing Officers. If the Assessing Officer does so, then, it would

amount to abdication of his statutory duties.

5. Considering the above facts, this Court is of the view that the assessments should be reopened after considering the petitioner's objections, dated 04.12.2017.

6. Accordingly, these Writ Petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for fresh consideration, who shall consider the petitioner's objections, dated 04.12.2017, afford an opportunity of personal hearing to the petitioner, and redo the assessments in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

dna/sd

To

The Assistant Commissioner (ST)
Choolai Assessment Circle
Second Floor, Palaniappa Maligai
10, Greams Road, Chennai 6.

+1cc to Mr. Advocate, S.R.No. 92098
+1cc to the Government Pleader, S.R.No. 92419

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TR(17/01/2018)