IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2018

C O R A M

THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.12249 and 12250 of 2016
and
WMP Nos.10585 to 10588 of 2016

M/s.Manoharan Automobiles,
Rep. by its Proprietor-S.Manoharan,
No.132, M.B.T.Road,
Muthukadai,
Ranipet 632 401,
Vellore District. ...Petitioner in both W.Ps.

vs

The Deputy Commercial Tax Officer,
Ranipet,
Vellore District. ...Respondent in both W.Ps.

Prayer:Writ petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN-33264280122/2010-11 and TIN-33264280122/2011-12 dated 01.03.2016 respectively and quash the same.

For petitioner : Mr.S.Rajasekar
in both W.Ps.

For Respondents: M/s.G.Dhana Madhri
in both W.Ps. Government Advocate (T)

C O M M O N O R D E R

In both these writ petitions, the petitioner is one and the same, who is an assessee before the respondent. These writ petitions are filed challenging the order of assessment passed in respect of the Assessment Years 2010-11 and 2011-12 dated 01.03.2016.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

3.It is seen that before passing the order of assessment, the petitioner was issued with a notice of proposal for each assessment year. Admittedly, the petitioner has not filed reply to the said notice. Therefore, the Assessing Authority, having left with no other option and finding that the assessee has not filed any objections, confirmed the proposals. Now, these writ petitions are filed before this Court by raising very many contentions on merits against the impugned assessment orders.

4.This Court, at this stage, is not inclined to go into the merits of the contentions raised by the petitioner challenging the assessment orders, as admittedly all these contentions have not been placed before the Assessing Authority by way of reply to the notice of proposal. The petitioner sought to explain as to why such reply was not filed before the Assessing Authority. It is stated in the affidavit filed in support of the writ petition that a clerk, worked in the petitioner office, who received the notices did not bring it to the notice of the petitioner. Therefore, it is stated that non filing of the reply was neither wilful nor wanton. Therefore, the learned counsel for the petitioner submitted that one more opportunity may be given to the petitioner to place their objections before the Assessing Authority so that the order of assessment can be passed on merits after considering those objections.

5.Learned Government Advocate appearing for the respondent submitted that the petitioner having failed to reply to the show cause notice, cannot find fault with the Assessing Officer in passing the impugned orders of assessment.

6.There is no dispute to the fact that the petitioner was issued with the notice of proposal before passing the order of assessment. Therefore, the petitioner should have been vigilant and filed their reply within time so as to enable the Assessing Authority to pass the order of assessment on merits and in accordance with law. But the petitioner failed to do so. However, considering the fact that the petitioner has given a reason for not sending the reply immediately and considering the fact that the Assessing Authority has also passed the order of assessment only by stating that the petitioner has not filed any reply, without there being any further discussions on merits, this Court is of the view that interest of justice would be met by remitting the matter back to the Assessing Authority to pass a fresh order of assessment after getting a reply/explanation from the petitioner, however subject to certain terms as stipulated hereunder.

7.Accordingly, these writ petitions are disposed of in the following terms:

a) The impugned orders of assessment shall be treated by the Assessing Officer as well as the petitioner as a notice of proposal;

b) The petitioner shall send a reply along with 15% of the tax demanded within a period of three weeks from the date of receipt of a copy of this order;

c) On receipt of such reply/explanation along with payment of 15% of the tax demand as stipulated supra, the respondent shall pass order of assessment afresh after giving due opportunity of personal hearing to the petitioner.

d) Such exercise shall be done by the Assessing Authority within a period of four weeks from the date of receipt of the reply and payment from the petitioner as stated supra.

e) If the petitioner fails to make the payment and submit reply within the time stipulated, the orders impugned in these writ petitions stand restored. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vri

To

The Deputy Commercial Tax Officer,
Ranipet,
Vellore District.

+ 2 ccs to Mr. R. Hemalatha, Advocate Sr.54827
+ 1 cc to Special Government Pleader SR.55109

W.P.No.12249 and 12250 of 2016

(CS-IX)
EU(21/08/2018)