IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.20822 to 20824 of 2018
and
WMP.Nos.24440 to 24442 of 2018

M/s.Deekay Electricals
Represented by its Partner
Mr.Arun Kumar Jain .. Petitioner
(in W.P.Nos.20822 to 20824 of 2018)

Vs.

The Assistant Commissioner (ST)
Earlier designated as
The Assistant Commissioner (CT)
N.S.C. Bose Road Assessment Circle,
Chennai-600 001. .. Respondent
(in W.P.Nos.20822 to 20824 of 2018)

Writ petition No.20822 of 2018 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent in TIN/33400260947/2009-2010 dated 18.04.2018 and the consequential proceeding dated 17.07.2018 and quash the same as passed contrary to the provisions of the TNVAT Act and against the principles of natural justice and further directing the respondent to pass a fresh assessment order after granting reasonable opportunity to the petitioner including a personal hearing.

Writ petition No.20823 of 2018 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent in TIN/33400260947/2012-2013 dated 10.04.2018 and the consequential proceeding dated 17.07.2018 and quash the same as passed contrary to the provisions of the TNVAT Act and against the principles of natural justice and further directing the respondent to pass a fresh assessment order after granting reasonable opportunity to the petitioner including a personal hearing.

Writ petition No.20824 of 2018 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent in TIN/33400260947/2013-2014 dated 18.04.2018 and the consequential proceeding dated 17.07.2018 and quash the same as passed contrary to the provisions of the TNVAT Act and against the principles of natural justice and further directing the respondent to pass a fresh assessment order after granting reasonable opportunity to the petitioner including a personal hearing.

For Petitioner: Mr.P.Rajkumar
(in W.P.Nos.20822 to 20824 of 2018)

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)
(in W.P.Nos.20822 to 20824 of 2018)

C O M M O N O R D E R

In all these writ petitions, the petitioner is one and the same. These writ petitions are filed challenging the orders of assessment passed in respect of the assessment years 2009-2010, 2012-2013 and 2013-2014 respectively.

2. Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondent in all these writ petitions. By consent of the parties, these writ petitions are taken up for final disposal at the admission stage itself.

3. The main grievance of the petitioner is that the impugned orders of assessment were passed in violation of principles of natural justice, as no opportunity of personal hearing was given to the petitioner, even though the same was contemplated in the notices of proposal issued on 01.08.2017. It is the case of the petitioner that though the explanation given to the notices of proposal, followed by furnishing of further documents on subsequent dates in pursuant to other notices issued by the respondent, was considered by the Assessing Officer, he has however, not chosen to give an opportunity of personal hearing to the petitioner, especially, when he has decided to reject the contentions raised by the petitioner and the documents filed in support of such contentions.

4. The learned counsel for the petitioner submitted that the respondent-Assessing Officer did not even intimate the date of personal hearing to the petitioner before passing the impugned orders of assessment. Therefore, he contended that the principles of natural justice was not followed in its strict sense. In support of such contention, the learned counsel relied on an order passed by this Court in W.P.No.6868 to 6874 of 2017 dated 21.03.2017.

5. Per contra, the learned Government Advocate (Tax) contended that even though personal hearing was not given before passing the orders of assessment, the fact remains that the

petitioner filed applications under Section 84 of the Tamil Nadu Value Added Tax Act and while disposing those applications, the petitioner was afforded with personal hearing. Therefore, she contended that when the respondent has rejected the applications filed under Section 84 of the TNVAT Act, after affording an opportunity of personal hearing, the petitioner is not entitled to raise the very same issue before this Court, while challenging the orders of assessment.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Tax) for the respondent.

7. Upon hearing the learned counsels appearing on either side and perusing the materials placed before this Court, it is evident and not in dispute that the notices of proposal sent to the petitioner on 01.08.2017, specifically informed the petitioner that they would be given an opportunity of being heard in person to put forth their objection within a period of 15 days from the date of receipt of such notices. It is also not in dispute that on receipt of such notices of proposal, the petitioner made their objections in writing and also placed some documents thereafter, in pursuant to the subsequent notices issued by the respondent on 12.02.2018 and 15.05.2018. Therefore, it is evident that when the Assessing Officer has called upon the petitioner to produce further documents on 12.02.2018 and again on 15.05.2018, he has not concluded the proceedings. It is also not in dispute that the petitioner furnished certain documents on receipt of such notices. Therefore, the requirement to comply with personal hearing arises only thereafter. In this case, admittedly, no such opportunity was given to the petitioner. In all fairness, the Assessing Officer should have intimated the date of personal hearing. It is not done in this case. On the other hand, the Assessing Officer has proceeded to pass the impugned orders of assessment, thereby, rejecting the contentions raised by the petitioner. At this juncture, it is relevant to note that this Court has considered the very same issue in W.P.Nos.6868 to 6874 of 2017, by considering a Circular issued by the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-5 in Circular No.7/2014, and passed the order on 21.03.2017, wherein, this Court has observed at Paragraph Nos. 9 & 10 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 - 5 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 if, 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 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."

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".

8. It is true that the petitioner, on filing the application under Section 84 of the TNVAT Act, was called upon

to appear in person and explain. But in my considered view, providing such personal hearing, after passing the orders of assessment, though at the time of hearing the application filed under Section 84 of the TNVAT Act, is like putting the cart before the horse, since such opportunity of personal hearing, as contemplated by the respondent themselves, while issuing the notices of proposal, must have been provided before passing the orders of assessment and not thereafter, as has been done in this case. Therefore, without going into the merits of the contention raised by the petitioner and expressing any view on the same, in respect of the merits of the assessment, this Court is convinced to set aside the orders of assessment only on the ground of violation of principles of natural justice. 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 to pass fresh orders of assessment in respect of each assessment year, after affording an opportunity of personal hearing, by indicating the date of such hearing. 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. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrarmk

To

The Assistant Commissioner (ST)
Earlier designated as
The Assistant Commissioner (CT)
N.S.C. Bose Road Assessment Circle,
Chennai-600 001.

+1cc to Mr.P.Raj Kumar, Advocate SR.No.55129
+1cc to Special Government Pleader SR.No.55741

W.P.Nos.20822 to 20824 of 2018

KS(CO)
GN(29/08/2018)