IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.5716 of 2018
and
W.M.P.No.7062 of 2018

M/s. JKB Corporation,
represented by its Proprietor,
No.378, Poottai Road,
Sankarapuram,
Villupuram District. .... Petitioner

Vs.

The State Tax Officer (Main)
Kallakurichi. ...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of certiorari to call for the records of the respondent in his proceedings in TIN 33214781300/2016-17and quash the assessment order dated 17.01.2018 passed therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.M.Hariharan,
Additional Government Pleader (T)

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal.

2. The petitioner is a aggrieved against the order of assessment dated 17.01.2018 passed in respect of the assessment year 2016-17. The main contention raised in this writ petition is that the Assessing Officer is not justified in observing that the petitioner has accepted the stock difference before the Officer at the time of inspection without there being any independent application of mind and findings rendered based on the objections filed by the petitioner to the notice of proposal. In other words, the contention of the petitioner is that the Assessing Officer cannot simply rely upon the so called acceptance of the stock difference at the time of inspection, especially, when the petitioner has chosen to dispute and deny

such acceptance through their letter dated 23.12.2016 issued well before the issuance of notice of proposal. Therefore, it is contended that the impugned order cannot be sustained as the Assessing Officer, being the quasi-judicial authority, has not applied his mind independently.

3. In support of such contention, the order passed by this Court in similar circumstances dated 13.06.2017 made in W.P.No.9753/2017 is relied upon wherein at paragraph Nos. 5 and 6, it has been observed as follows:

> 5. Perusal of the impugned order would show that the same came to be passed based on the issue of sales suppression. The Assessing Officer solely relied on the report of the Enforcement wing and the admission of the petitioner before such Enforcement wing with regard to stock difference. However, a perusal of the reply filed by the petitioner dated 06.08.2016 in response to the notice of proposal would show that the petitioner has not accepted the stock difference and on the other hand, it is their categorical case that the stock deficit found was only a notional figure arrived from notional profit and loss account and the acceptance made by them before the Enforcement wing was only to purchase peace. Therefore, it is clear that the case of the petitioner is that the stock difference is notional and not based on real and physical verification. Needless to say that the Assessing Officer being a quasi-judicial authority has to independently apply his mind and arrive at a conclusion based on the report filed by the Enforcement wing and the reply filed by the petitioner to the notice of proposal.
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> 6. In this case, the Assessing Officer has not resorted to do so and on the other hand, he imposed the tax and penalty by holding that there was sale suppression, simply by relying on the report of the Enforcement wing. Therefore, I am of the view that the Assessing Officer has to re-consider the whole issue afresh based on the objections raised by the petitioner and pass fresh order of assessment by independently applying his mind to the facts and circumstances of the case, also by giving personal hearing to the petitioner. Accordingly, the Writ Petition is allowed and the impugned order is set aside.

Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment as stated supra within a period of four weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any view on the merits of the claim made by the petitioner as it is for the Assessing Officer to consider and decide. No costs. Consequently, connected miscellaneous petitions are closed.

4. Learned counsel for the respondent submitted that the Assessing Officer has passed the order of assessment by expressing the reasons in support of such assessment. However, he fairly submitted that the issue involved in this case is squarely covered by the above order passed by this Court in W.P.No. 9753/2017.

5. Considering the above stated facts and circumstances and considering the very fact that the Assessing Officer has passed the order of assessment solely based on the report submitted by the inspecting authorities who conducted the inspection at the petitioner premises, without there being any independent application of mind, the Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment, after considering the objections raised by the petitioner already. Such exercise shall be done by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any view on the merits of the claim made by the petitioner, as it is for the Assessing Officer to consider and decide. The petitioner shall also be given personal hearing before finalising the order of assessment. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

vsi

To

The State Tax Officer (Main)
Kallakurichi.

+1 CC to The Spl. Govt. Pleader(T) sr 19771.
+1 CC to Mr.P.V. Sudakar, Advocate sr 19158.

W.P.No.5716 of 2018

SS(CO)
SP(22/03/2018)