IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.21211 & 21212 of 2018
and
WMP.Nos.24881 & 24882 of 2018

M/s.Abirami Builders
Rep. by its Partner
No.7/88A First Floor
Pillaiyarkoil Street, Thiruthieri
Singaperumal Koil
Kancheepuram District. ... Petitioner

(in WP.Nos.21211 & 21212 of 2018)

vs.

The Assistant Commissioner (ST) (FAC)
Chengalpattu Assessment Circle
No.16-A, First Main Road,
Anna Nagar, Chengalpattu-603 001. ... Respondent

(in WP.Nos.21211 & 21212 of 2018)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent and quash the illegal assessment proceedings in TIN Nos.33886305335/2016-17 & 33886305335/2015-16 respectively dated 05.07.2018 as unconstitutional and direct the respondent to pass fresh orders to levy tax for the commodities purchased and used in the works contract as per Article 366(29A)(b) of the Constitution of India reported in [2018] 55 GSTR 99 (Supreme Court) as per the decision of the Apex Court and also as per Section 5 of the TNVAT Act after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C.Bakthasiromoni
(in WP.Nos.21211 & 21212 of 2018)

For Respondent : Mr.M.Hariharan
Additional Government Pleader (Tax)
(in WP.Nos.21211 & 21212 of 2018)

C O M M O N   O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself.

2. In both these writ petitions, the petitioner is one and the same. The petitioner is aggrieved against the orders of assessment passed in respect of the assessment years 2015-2016 and 2016-2017 dated 05.07.2018. The main grievance of the petitioner before this Court is that the impugned orders of assessment were passed without affording an opportunity of personal hearing to the petitioner, even though the same was sought for while furnishing a reply. Therefore, it is contended that the principles of natural justice has not been complied with in its strict sense.

3. It is not in dispute that the very same petitioner, by raising very same contention filed another writ petition in WP.No.20583 of 2018 in respect of the assessment year 2014-2015 and this Court, by order dated 10.08.2018, allowed the writ petition and set aside the impugned order of assessment therein on the ground of violation of principles of natural justice, also by remitting back the matter to the Assessing Authority to pass fresh order of assessment, after affording an opportunity of personal hearing to the petitioner.

4. The learned Additional Government Pleader (Tax) for the respondent is not disputing the above said fact. However, he submitted that even in the notice of proposal, it was specifically mentioned that the petitioner will be afforded an opportunity of personal hearing within a period of 15 days.

5. This Court has already considered such issue in another matter and found that, merely by saying that the Assessee will be given an opportunity of personal hearing, is not sufficient without fixing a date for personal hearing and informing the same to the Assessee. If not, there is no strict compliance or principles of natural justice. Therefore, this Court is of the view that these writ petitions are also entitled to the same relief as provided in the other writ petition. Accordingly, these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Authority to re-do the assessment and pass orders on merits and in accordance with law, after giving due opportunity of hearing to the petitioner. It is made clear that this Court is not expressing any view on the merits of the matter, as it is for the Assessing Authority to consider and decide. The whole exercise shall be completed by the

respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST) (FAC)
Chengalpattu Assessment Circle
No.16-A, First Main Road,
Anna Nagar, Chengalpattu-603 001.

+1cc to Mr.Baktha Sironmoni, Advocate, S.R.No. 57372
+1cc to the Government Pleader, S.R.No.56941

W.P.Nos.21211 & 21212 of 2018

MG(co)

rrs 07/09/2018