IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.5474 & 5475 of 2012
and
W.M.P.No.2 & 2 of 2012

M/s. Indowind Energy Ltd.,
Represented by its Vice President
Kothari Buildings
114 Mahatma Gandhi Road
Chennai - 600 034 ...Petitioner in both the W.P.s

vs.

1. The Commissioner of Commercial Taxes
   Chepauk,
   Chennai - 600 005.

2. The Commercial Tax Officer
   Nungambakkam Assessment Circle
   Taluk Office Complex
   Chennai - 600 031. ... Respondents in both the W.Ps.

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the second respondent revised assessment order dated 31.01.2012 in TIN:33670460570/2007-08 and TIN:33670460570/2007-08 respectively.

For Petitioner : Mr.Murali Kumaran
for M/s.Mcgan Law Firms

For Respondents : Mrs.G.Dhana Madhri
Government Advocate

C O M M O N O R D E R

In both these writ petitions, the petitioner is aggrieved against the order of the second respondent dated 31.01.2012, in revising the assessment made already in respect of assessment years 2007-08 and 2008-09.

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

3. It is contended on behalf of the petitioner that the revision of assessment was made without any scope for doing so under section 27 of the Tamil Nadu Value Added Tax Act, 2006, more particularly, when there are no new materials available before the Assessing Officer to reopen the assessment. It is also contended that no adequate opportunity of personal hearing was given to the petitioner before concluding the revision of assessment. A common counter affidavit is filed in the writ petitions reiterating the stand taken in the assessment order. However, insofar as the objections raised by the petitioner against the Assessing Officer in not providing the personal hearing is concerned, the learned Government Advocate submitted that eventhough, such opportunity was given to the petitioner to have such personal hearing immediately on the next working day of filing the objection, the petitioner has failed to utilise such opportunity. Therefore, she contended that the petitioner cannot make a complaint before this Court as though the Assessing Officer violated such principles of natural justice.

4. From the perusal of the respective pleadings filed by the parties and upon hearing the learned counsel appearing for the petitioner, it is evident that the assessment order was passed without conducting a personal hearing even though, it is stated by the Assessing Officer that the petitioner failed to utilise such opportunity. The admitted fact remains that such opportunity was given to the petitioner immediately on the next working day, to say within two days of filing the reply. Therefore, I find force in the submissions made on behalf of the petitioner that such short time may not be sufficient for the petitioner to make an effective appearance before the Assessing Officer in person and put forth their objections. However, insofar as the other contentions raised by the petitioner on the scope of section 27 of the Tamil Nadu Value Added Tax Act, 2006 is concerned, it is for the petitioner to raise such objections before the Assessing Officer, as this Court is inclined to set aside the impugned order and remit the matter back to the Assessing Officer only on the ground of not providing the personal hearing.

5. Accordingly, without expressing any view on the merits of the assessment, these Writ Petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment after giving due opportunity of personal hearing to the petitioner. The Assessing Officer shall intimate the date of personal hearing well in advance. On completion of such personal

hearing, the Assessing Officer shall pass the order of assessment on merits and in accordance with law, within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner of Commercial Taxes
   Chepauk,
   Chennai - 600 005.

2. The Commercial Tax Officer
   Nungambakkam Assessment Circle
   Taluk Office Complex
   Chennai - 600 031.

+1 CC to Spl. Govt. Pleader sr 67581.

W.P.Nos.5474 & 5475 of 2012

SP(09/10/2018)