IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.21939 of 2018
and
WMP.No.25725 of 2018

Durga Industries
18/26, 2nd Street,
Loganathan Nagar,
Choolaimedu, Chennai-600 094.
Rep. by its Managing Partner ... Petitioner

vs.

The Assistant Commissioner (ST)
Koyambedu Assessment Circle,
Chennai. ..Respondent

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings leading to passing of the Assessment Order vide TIN:33661085304/2015-16 dated 20.06.2018, quash the same and direct the respondent to pass fresh revised assessment order after providing an opportunity of reply and personal hearing.

For Petitioner : Mr.S.Sathiyanarayanan

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

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 20.06.2018 passed in respect of the assessment year 2015-2016. Though several issues were raised, the

Assessing Officer held against the Assessee only in respect of two issues, viz., Difference in TDS amount to be deducted and Sales suppression (Double the time invoice billing).

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Tax) for the respondent.

4. The main grievance of the petitioner is that the impugned order was passed in violation of principles of natural justice, since the Assessing Officer has made certain discussion in respect of Invoice Bill Nos. 411 and 415, without placing those details in the show cause notice issued to the petitioner. Therefore, it is contended that the findings rendered by the Assessing Officer in respect of those two invoices against the petitioner in the absence of the show cause notice indicating those details, cannot be sustained. It is also stated that the petitioner was not provided an opportunity of personal hearing.

5. The learned Additional Government Pleader (Tax) for the respondent submitted that the Assessing Officer has discussed that the computer software of the petitioner was not maintaining the invoice generation in order and that the bill once generated was deleted automatically. Even though it is contended so, he fairly admitted that the invoice bill Nos. 411 and 415 referred to in the impugned order, while dealing with the issue of sale suppression, have not been referred to in the show cause notice issued to the petitioner.

6. When such being the factual position, I find force in the submission made by the learned counsel for the petitioner that the assessment order was made without following the principles of natural justice. Therefore, this Court is of the view that the Assessing Officer has to re-do the assessment, after hearing the petitioner once again. At the same time, it is made clear that this Court is not expressing any view on the merits of the claim made by the petitioner, as against the order of assessment. Accordingly, this writ petition is allowed in the following terms:

(a) The impugned order is set aside. The petitioner and the respondent shall treat the impugned order as a fresh show cause notice.

(b) The petitioner shall give their reply within a period of two weeks from the date of receipt of a copy of this order.

(c) On receipt of such reply, the respondent shall inform in writing the date of personal hearing to the petitioner.

(d) On completion of such personal hearing, the respondent shall pass fresh order of assessment on merits and in accordance with law, within a period of four weeks thereafter.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST)
Koyambedu Assessment Circle,
Chennai.

+1cc to Mr.S.Sathiyanarayanan, Advocate, S.R.No.58648
+1cc to the Special Government Pleader, S.R.No. 58982

W.P.No.21939 of 2018

rrs/04/09/18