IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.09.2018

CORAM
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.22767 to 22771 of 2018
and
W.M.P.Nos.26599 to 26608 of 2018

Jothi P & C Consortium,
S.F. -87/2, P & C Garden, Nolambur,
Mogappair East,Chennai - 600 037,
Represented by S.P.Chinnasamy ... Petitioner
(in W.P.Nos.22767 to 22771 of 2018)

Vs.

The Assistant Commissioner (ST)
JJ Nagar Assessment Circle,
Chennai - 600 040 ... Respondent
(in W.P.Nos.22767 to 22771 of 2018)

Writ petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the Respondent dated 23.07.2018 with respect to TIN No.33121349926 for assessment years 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 respectively and quash the same and consequently, direct the Respondent to grant an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.P.J.Rishikesh
(in W.P.Nos.22767 to 22771 of 2018)

For Respondent : Mr.Master Ganesh,
Government Advocate (Tax)
(in W.P.Nos.22767 to 22771 of 2018)

C O M M O N O R D E R

Mr.Master Ganesh, learned Government Advocate (Tax) takes notice for the respondent. By consent of the parties, these main writ petitions are taken up for final disposal.

2. In all these writ petitions, the petitioner is one and the same. The petitioner is aggrieved against the orders of assessment dated 23.07.2018 passed in respect of the assessment years 2010-2011 to 2014-2015.

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

4. The main grievance of the petitioner before this Court is that the Assessing Officer has not followed the principles of natural justice in its strict sense before passing the impugned orders of assessment. To put it more specifically, it is contended by the petitioner that no personal hearing was given to the petitioner, when the Assessing Officer, apart from levying tax, has also chosen to impose penalty on the petitioner.

5. The learned counsel for the petitioner submitted that when the original notice of proposal was replied by the petitioner on 14.08.2017, further notice was issued on 20.04.2018 in the form of questionnaire, wherein, though the Assessing Officer has stated that the petitioner can avail the opportunity of personal hearing with prior appointment, no such opportunity was ever given to the petitioner. Therefore, he contended that the petitioner must be provided such opportunity so as to enable them to convince the Assessing Officer as to why the proposals are not correct.

6. On the other hand, the learned Government Advocate (Tax) for the respondent contended that in the second notice issued on 20.04.2018, it was clearly indicated that the petitioner can avail the opportunity of personal hearing with prior appointment within the notice time, which the petitioner failed to avail. Therefore, he contended that it is not open to the petitioner to make a complaint before this Court as if the Assessing Officer has violated the principles of natural justice.

7. Upon hearing the learned counsel appearing on either side and perusing the materials placed before this Court, it is evident that the impugned orders of assessment were passed, which included imposition of penalty, without affording an opportunity of personal hearing to the petitioner. No doubt, the notice dated 20.04.2018 indicated that the petitioner can avail such opportunity with prior appointment. It is also true that the petitioner has not sought for any appointment to have personal hearing. But, at the same time, when such personal hearing is mandatory, more particularly, before imposing penalty, the duty is cast upon the Assessing Officer to indicate the date of personal hearing in writing and send the same to the petitioner to appear on that day, irrespective of the fact as to whether the petitioner has sought for such personal hearing or not. In fact, Circular No.7 of 2014 dated 03.02.2014 issued by the Principal Secretary/Commissioner of Commercial Taxes, Chennai-5, stipulates that such personal hearing is invariably to be afforded to the dealer, irrespective of whether the dealer has opted for personal hearing or not. I myself has considered the effect of the said Circular in WP.Nos.20822 to 20824 of 2018 dated 13.08.2018 and allowed those writ petitions, by remitting the same to the concerned Assessing Officer to pass fresh orders of assessment, after affording an opportunity of personal hearing.

8. Accordingly, I am inclined to grant similar relief to the petitioner, however, putting the petitioner on some terms, only for the reason that the petitioner though made a compliant before this Court that a personal hearing was not given, had however, not specifically placed such request before the Assessing Officer in writing.

9. 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, for re-doing the assessment, after affording an opportunity of personal hearing to the petitioner, subject to the condition that the petitioner pays 15% of the tax liability for each assessment year, within a period of four weeks from the date of receipt of a copy of this order. On receipt of such payment, the Assessing Officer shall indicate the date of personal hearing and inform the same to the petitioner in writing, well in advance. After completion of such personal hearing, the Assessing Officer shall pass fresh orders of assessment on merits and in accordance with law, within a period of four weeks thereafter. It is made clear that this Court is not expressing any view on the merits of the assessment, as it is for the Assessing Officer to consider and decide the same. If the petitioner fails to make the payment of 15% of tax as stated supra, within the time stipulated, the orders of assessment impugned in these writ petitions stand restored automatically, without reference to the order passed in these writ petitions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner(ST),
J.J.Nagar Assessment Circle,
Chennai - 600 040.

+5cc to Mr.P.J.Rishikesh, Advocate, S.R.No.62479
+1cc to the Government Pleader, S.R.No.62284

W.P.Nos.22767 to 22771 of 2018

MP(CO)

rrs 08/10/2018