IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.23313 to 23315 of 2018
and
WMP.Nos.27211 to 27213 of 2018

M/s.Suguna Indane Gas Service
No.141/125B, Krishnagiri Main Road,
Bargur Post,
Krishnagiri Taluk,
Krishnagiri District-635 124.

..Petitioner
(in WP Nos.23313 to 23315 of 2018)

Vs

The Assistant Commissioner (ST)
Krishnagiri.

..Respondent
(in WP Nos. 23313 to 23315 of 2018)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the connected records relating to the proceedings of the respondent herein made in TIN 33363302695/2013-2014, 2014-2015 and 2015-2016 dated 19.06.2018 and quash the same.

For Petitioner : Mr.Manoharan S Sundaram
(in WP Nos.23313 to 23315 of 2018)

For Respondent : Mr.M.Hariharan
Additional Government Pleader (T)
(in WP Nos. 23313 to 23315 of 2018)

COMMON ORDER

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.

2. In all these writ petitions, the petitioner is one and the same. The petitioner is aggrieved against the orders of

assessment dated 19.06.2018 passed in respect of the assessment years 2013-2014, 2014-2015 and 2015-2016.

3. The Assessing Officer, apart from levying tax, has also imposed penalty under Section 22(5) of the Tamil Nadu Value Added Tax, Act, 2006 to the tune of Rs.6,58,875/- for the assessment year 2013-2014, Rs.5,51,232/- for the assessment year 2014-2015 and Rs.6,44,366/- for the assessment year 2015-2016.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

5. Though these writ petitions are filed challenging the entire orders of assessment in imposing tax and penalty, the learned counsel for the petitioner submitted that the petitioner is confining the challenge only as against imposition of penalty and not against the tax. It is further contended by the learned counsel that the petitioner has already paid the tax to the tune of Rs.3,61,277/- for the assessment year 2013-2014, Rs.3,35,580/- for the assessment year 2014-2015 and Rs.4,04,869/- for the assessment year 2015-2016 and willing to pay the balance tax, as referred to in the impugned orders. However, insofar as imposition of penalty is concerned, it is contended on behalf of the petitioner that the same is erroneous on the simple reason that before imposing such penalty, the Assessing Officer failed to give any notice of proposal for imposing such penalty. It is also contended that even personal hearing was not given to the petitioner before imposing penalty, especially, when such opportunity of personal hearing is mandatory.

6. The learned Additional Government Pleader for the respondent fairly admitted that before imposing penalty, no notice of proposal was given and the personal hearing was also not afforded to the petitioner.

7. Perusal of the notice of proposal dated 27.11.2017 would indicate that the Assessing Officer has only proposed to impose the tax on the petitioner, without there being any indication of proposal for imposing penalty. Therefore, it is evident that the impugned orders insofar as imposition of penalty have been passed in violation of the principles of natural justice, as no notice of proposal was given to the petitioner, apart from not providing an opportunity of personal hearing as well.

Therefore, on that ground alone, this Court is inclined to set aside the impugned orders only insofar as imposition of penalty is concerned.

8. Accordingly, these writ petitions are allowed in part and the impugned orders are set aside only insofar as imposition of penalty is concerned. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment insofar as imposition of penalty is concerned, after giving due opportunity of hearing, which includes personal hearing. Such exercise shall be done by the respondent, within a period of four weeks from the date of receipt of a copy of this order. The balance tax, if any, payable by the petitioner shall be paid without reference to the pendency of the proceedings before the Assessing Officer in pursuant to the order passed by this Court in these writ petitions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST)
Krishnagiri.

+3cc to Mr.Manoharan S Sundaram, Advocate sr.no.62014, 62013, 62012
+1cc to Special Government Pleader sr.no.62283

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