IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.23428 to 23430 of 2018
and
W.M.P.Nos.27343 to 27345 of 2018

Tvl.R.M.& Co.
Represented by its Proprietor
2/354 A, Jakkasamudram Village
Palacode, Dharmapuri - 636 805. ... Petitioner
(in W.P.Nos.23428 to 23430 of 2018)

Vs.

The State Tax Officer
Palacode Assessment Circle
Palacode, Dharmapuri - 636 805. ... Respondent
(in W.P.Nos.23428 to 23430 of 2018)

Writ petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the records of the respondent in order dated 04.06.2018 in TIN No.33116345383/2015-2016, 33116345383/2016-2017 and 33116345383/2017-2018 and quash the same.

For Petitioner : Mr.Adithya Reddy
(in W.P.Nos. 23428 to 23430 of 2018)
For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)
(in W.P.Nos. 23428 to 23430 of 2018)

C O M M O N O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondent in all these writ petitions. 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 04.06.2018 passed in respect of the assessment years 2015-2016, 2016-2017 & 2017-2018.

3. Heard both sides.

4. The main grievance of the petitioner before this Court, as against the orders of assessment, is that the petitioner was not given an opportunity of personal hearing, since the impugned orders also imposed penalty on the petitioner under Section 27 (3)(C) of the Tamil Nadu Value Added Tax, Act, 2006.

5. The learned counsel for the petitioner, however, fairly submitted that the Assessee has not filed their reply to the notices of proposal within the time stipulated therein, only due to the reason that the proprietor of the petitioner's firm had fallen ill at the relevant point of time and thus, the reply could not be filed as stated supra. Therefore, he contended that if one more opportunity is given to the petitioner, he would approach the Assessing Officer and place their objections.

6. On the other hand, the learned Government Advocate (Tax) for the respondent submitted that in the absence of any reply to the notices of proposal, the Assessing Officer is left with no other option, except to pass the orders of assessment. Therefore, she contended that the petitioner cannot find fault with the Assessing Officer.

7. Upon hearing the learned counsels appearing on either side, it is evident that the petitioner has not filed their objection/reply to the notices of proposal in time. However, the reason for not filing such reply is explained in the affidavit filed in support of these writ petitions, by stating that the proprietor of the petitioner's firm had fallen ill at the relevant point of time, which prevented the Assessee from filing the reply in time. Even otherwise, perusal of the impugned orders would show that the Assessing Officer has imposed penalty on the petitioner, which necessarily to be preceded with an opportunity of personal hearing. In the absence of such hearing, this Court is of the view that the matter needs to be remitted back to the Assessing Officer to re-do the assessment once again, after giving an opportunity of hearing to the petitioner not only for filing their reply and also to be heard in person. However, taking note of the fact that the petitioner has not filed their reply within the time, this Court is inclined to remit the matter only, by imposing some conditions on the petitioner.

8. Accordingly, these writ petitions are allowed in the following terms and conditions:

> (a) The impugned orders of assessment are set aside and the matter is remitted back to the Assessing Officer for passing fresh orders of assessment on merits and in accordance with law, after considering the reply to be filed by the petitioner within

the time stipulated hereunder and also on receipt of the part payment of tax liability as further indicated hereunder.

(b) The petitioner is directed to furnish their reply along with payment of 15% of the tax liability within a period of two weeks from the date of receipt of a copy of this order.

(c) On receipt of such reply along with payment of 15% of the tax liability, within the time stipulated supra, the Assessing Officer shall fix the date of personal hearing and inform the same to the petitioner.

(d) On completion of such personal hearing, the Assessing Officer shall pass the orders on merits and in accordance with law, within a period of four weeks from the date of completion of personal hearing.

9. It is made clear that this Court is not expressing any view on the merits of the matter, as this writ petition is allowed only on the reason stated supra and not on considering the merits of the matter. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

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To

The State Tax Officer
Palacode Assessment Circle
Palacode, Dharmapuri - 636 805.

+1cc to Mr.Adithya Reddy, Advocate SR.No.63184

+1cc to Special Government Pleader (Tax) SR.No.62704

W.P.Nos.23428 to 23430 of 2018

GMY(26/09/2018)