IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.23815 of 2018
and
W.M.P.No.27754 of 2018

Tvl.Hari Trading Company,
Represented by its Proprietor,
S.Kannan, No.476, Uppupalayam Road,
Vellakovil - 638 111, Tirupur District.
...Petitioner

Vs

The State Tax Officer (ST),
Kangeyam Assessment Circle,
Kangeyam. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARI calling for the records on the files of the respondent in TIN:33863085237/2013-14 dated 30.05.2018 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondent : Mrs.G.Dhana Madhri,
Government Advocate (Tax)

O R D E R

This writ petition is filed challenging the order of assessment dated 30.05.2018, passed in respect of the assessment year 2013-2014.

2. Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondent. By consent of parties, this writ petition is taken up for final disposal at the admission stage itself.

3. The main grievance of the petitioner before this Court is that the Assessing Officer has not taken into consideration the revised return filed by the petitioner along with a copy of form 'WW' on 31.12.2014, before passing the impugned order of assessment. Therefore, it is contended by the learned counsel for the petitioner that the impugned assessment order cannot be sustained on the ground of non-application of mind.

4. On the other hand, the learned Government Advocate (Tax) appearing for the respondent submitted that the

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petitioner did not give reply to the notice of proposal and also not utilized the opportunity of personal hearing given to them. Therefore, she contended that the petitioner is not entitled to seek any indulgence before this Court.

5. Heard both sides.

6. There is no dispute to the fact that before passing the impugned order of assessment, the petitioner was issued with notice of proposal dated 10.04.2018, wherein, apart from calling upon the petitioner to make their objections, if any, for the proposal made in the said notice, the Assessing Officer has also specifically indicated the date of personal hearing as 16.04.2018 for the petitioner to appear on the said day and represent their case. The petitioner is not disputing the receipt of the said notice. However, the fact remains that the petitioner neither filed their reply nor appeared before the Assessing Officer on the date of the personal hearing. Without utilizing the opportunity given by the Assessing officer, as stated supra, the petitioner is not entitled to canvass the correctness or otherwise of the impugned order of assessment before this Court, by filing the writ petition. In the absence of any reply from the Assessee and also when they have not chosen to appear in person on the date of personal hearing, the Assessing Officer is left with no other option, except to complete the assessment and pass the order thereon. If the petitioner is having any grievance against such assessment, it is for them to challenge the same, before the next fact finding authority by filing regular appeal.

7. Therefore, this Court is not inclined to go into the contention raised by the petitioner on the factual aspect of the matter, as it is for them to raise those objections before the Appellate Authority by filing regular appeal. Accordingly, without expressing any view on the merits of the contentions made in the writ petition, as well as in the assessment order, this writ petition is disposed of, only by granting liberty to the petitioner to file an appeal before the First Appellate Authority within a period of two weeks from the date of receipt of a copy of this order, by complying with all the statutory requirements. If any such appeal is filed, the concerned Appellate Authority shall consider the same and pass orders on the same on merits and in accordance with law, without reference to the period of limitation. No costs. Connected miscellaneous petition is closed.

krk/mk

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

The State Tax Officer (ST),
Kangeyam Assessment Circle,
Kangeyam.

+1cc to Special Government Pleader SR.NO.63185
+1cc to Mr.R.Senniappan, Advocate SR.NO.63342

RJ(CO)
sm:26.9.2018

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