IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.24035 of 2018
and
W.M.P.No.28002 of 2018

M/s. Shitiji Commercial,
Rep. By its Prop: Sri Rajan Sapra,
No.12, Rathinam Complex,
Avenue Road,
Nungambakkam,
Chennai - 600 034. ... Petitioner

vs.

The Assistant Commissioner (ST)
Valluvarkottam Asst.Circle,
No.10, Palaniyappa Maligai, Greams Road,
Chennai - 600 006. ... Respondent

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the impugned order passed by the respondent in TIN.33441502234/2014-15 dated 27.08.2018 and quash the same as violative of principles of natural justice, illegal, contrary to law.

For Petitioner : Mr.M.A.Mudimannan

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)

O R D E R

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

2. The petitioner is aggrieved against the revised order of assessment dated 27.08.2018 in respect of assessment year 2014-

2015. The petitioner is an assessee under the respondent. In respect of the assessment year 2014-15, a notice of proposal dated 27.05.2016 was issued on the petitioner in respect of stock reconciliation issue. According to the respondent, there was no stock of goods either at the registered place of business or at the godown at the time of inspection conducted, while the value of closing stock as per Profit and Loss account showed Rs.9,11,42,516/-. Thus, the Assessing Officer treated the said value as a difference and proposed to impose tax on the petitioner at 5%. The Assessing Officer also proposed to impose penalty under section 27 of the Tamilnadu Value Added Tax Act, 2006. The petitioner gave a reply on 10.06.2016 specifically stating that the physical as well as the closing stock as per their Profit and Loss account was Nil only. In support of such contention, the petitioner enclosed the Profit and Loss account for the relevant period wherein the closing stock was shown Nil. However, the Assessing Officer proceeded to pass the impugned order of assessment by sticking to the proposal and accordingly, imposed tax and penalty on the petitioner.

3. Heard both sides.

4. The main grievance of the petitioner before this Court is that apart from the fact that the Assessing Officer has not applied his mind to the materials submitted by the petitioner along with their reply dated 10.06.2016, has not afforded an opportunity of personal hearing to the petitioner. Thus, it is contended that if an opportunity of personal hearing is given, the petitioner will be in a position to satisfy the Assessing Officer with regard to the mistake committed at his end while arriving at the figure of closing stocking which is shown as Nil in the profit and loss account.

5. Learned Government Advocate appearing for the respondent submitted that through the notice of proposal, the Assessing Officer informed the petitioner to appear in person along with the original document on 13.06.2016 and however, the petitioner has not utilised that opportunity. Therefore, she contended that the Assessing Officer cannot be found fault with in passing the impugned order.

6. It is true that the Assessing Officer, while issuing the notice of proposal found that there was some variation found during stock reconciliation to the tune of Rs.9,11,42,516/-, for which, the Assessing Officer has placed reliance on the value of the closing stock as per the Profit and Loss Account. However, when the petitioner has filed their reply, they enclosed the Profit and Loss Account which only indicates that closing stock as Nil and not as Rs.9,11,42,516/- as indicated in the notice of proposal. Therefore, it appears that some mistake has crept in

at the end of the Assessing Officer while arriving at such figure. However, this Court at this stage, is not expressing any view on the merits of the assessment as it is inclined to set aside the order of assessment on the ground that the petitioner is entitled to an opportunity of personal hearing. Moreover, the documents filed along with the reply were also not considered by the Assessing Officer, while arriving at the impugned order of assessment. Therefore, this Writ petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment once again on merits and in accordance with law after giving due opportunity of personal hearing to the petitioner and also considering all the materials furnished by them along with the reply. Such order will be passed by the respondent within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vsi

To

The Assistant Commissioner (ST)
Valluvarkottam Asst.Circle,
No.10, Palaniyappa Maligai, Greams Road,
Chennai - 600 006.

+1cc to Mr.K.Jayachandran, Advocate, S.R.No.63520

+1cc to the Spl Government Pleader, S.R.No.63587

W.P.No.24035 of 2018

KAN(CO)
GSP(25/09/2018)