IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.24553 of 2018
and
W.M.P.No.28583 of 2018

Chemical Construction Company (P) Ltd.,
Represented by its Managing Director O.V.Nambiar,
956/957, T.H. Road,
Kaladipet, Chennai - 600 019.
... Petitioner

Vs

The State Tax Officer,
Kaladipet Assessment Circle,
703, T.H. Road, Chennai - 600 019.
... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records on the files of the respondent herein in his CST/648564/2014-15 dated 6-6-2018, quash the same, with the direction to redo the assessment after providing an opportunity of being heard along with their objections dated 28.02.2018 & 09.04.2018.

For Petitioner : Mr.R.Kumar
For Respondent : Mr.M.Hariharan,
Additional Government Pleader (Tax)

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondent. By consent of the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 06.06.2018 passed in respect of the assessment year 2014-15.

3. Though this writ petition is filed by raising very many contentions on the merits of the assessment order, this Court is not inclined to go into those contentions, as it is for the next fact finding authority to consider those objections touching upon the factual aspects of the matter and pass orders on the same.

4. However, the main grievance expressed by the petitioner before this Court to maintain the present writ petition and also for interference with the assessment order is that the Assessing Officer has not followed the principles of natural justice, by not affording an opportunity of personal hearing to the petitioner before passing the impugned order. The contention of the petitioner before this Court is that when the order of assessment also imposed penalty, the Assessing Officer should have granted personal hearing to the petitioner before concluding the assessment.

5. The learned Additional Government Pleader (Tax) for the respondent, however, submitted that the petitioner did not seek such personal hearing specifically in their reply and therefore, such objection cannot be raised before this Court.

6. Heard both sides.

7. There is no dispute to the fact that the Assessing Officer has not afforded an opportunity of personal hearing to the petitioner, before passing the impugned order which also levied penalty. No doubt, it is true that the petitioner, while making their reply, has not specifically sought for such personal hearing. But, a perusal of the Circular No.7/2014, issued by the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, chennai - 600 005, would indicate that the above objection raised by the learned Additional Government Pleader (Tax) appearing for the respondent cannot be sustained. In fact, this Court has considered the scope of the said circular in very many cases and one such order was passed in W.P.Nos.6868 to 6874 of 2017 dated 21.03.2017, wherein at paragraph Nos. 9 and 10, it has been observed as follows:

> "9.At this juncture, it is useful to refer to the Circular issued by the office of the Principal Secretary/ Commissioner of Commercial Taxes, Chepauk, Chennai - 5 in Circular No.7/2014, wherein, it is observed as follows:
>
> "a) Passing of Orders:
>
> Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned

from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process.

i) After issue of notice calling for the objections, if any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may be only if, there exists a genuine reason.

ii) Objections filed by the dealer on the pre assessment/revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised, in short, the speaking order which is complete shall be passed.

iii) As the provision in the TNVAT Act stipulates the conditions of granting of personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not."

10.Going by the above Circular issued by the Department and considering the fact that the pre-assessment notices and revised notices suggested, as though the petitioner is entitled for a personal hearing, the question that is to be gone into and decided in this case is as to whether the petitioner was really afforded such opportunity. As I pointed out earlier, the respondent has not intimated the petitioner about the date of personal hearing in pursuant to the objections filed by them. When such being the factual position, the only conclusion that can be arrived is that the respondent though stated that an opportunity of personal hearing would be given to the petitioner, has, infact, not afforded such opportunity to the petitioner by not informing the date of such hearing. Therefore, it is evident that the petitioner was not given such personal hearing and consequently, as rightly argued by the learned counsel for the petitioner, the impugned orders of assessment suffers on the ground of violation of natural justice."

8. Therefore, it is evident that the Assessing Officer ought

to have given personal hearing to the petitioner before concluding the assessment. In the absence of such personal hearing, the impugned assessment order cannot be sustained. However, insofar as the merits of the assessment, this Court is not expressing any view, as it is for the Assessing Officer to consider and decide once again after hearing the petitioner.

9. Accordingly, 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 re-do the assessment, after giving due opportunity of hearing to the petitioner. The Assessing Officer shall inform the date of personal hearing to the petitioner in writing. The petitioner is directed to appear on that day without fail. Thereafter, the Assessing Officer is directed to pass fresh orders of assessment on merits and in accordance with law. The whole exercise shall be completed by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. No cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer,
Kaladipet Assessment Circle,
703, T.H. Road, Chennai - 600 019.

+1cc to Mr.R.Kumar, Advocate, S.R.No.64426

+1cc to Spl the Government Pleader, S.R.No.64698

W.P.No.24553 of 2018

PVS(CO)
GSP(03/10/2018)