IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.16670 of 2018
and
WMP.Nos.19884 & 19885 of 2018

M/s.Babu Agencies
Rep. by its Prop.V.Babu
No.19, Babu Rajendra Singh Street,
Gudiyatham, Vellore District. ... Petitioner

vs.

The State Tax Officer
Gudiyatham (East) Circle
Gudiyatham,
Vellore District. .. Respondent

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN No.33094240494/2016-2017 dated 15.02.2018 and quash the same.

For Petitioner : Mr.S.Rajasekar

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

O R D E R

The petitioner is aggrieved against the order of assessment dated 15.02.2018 passed in respect of the assessment year 2016-2017.

2. Heard both sides.

3. The grievance expressed before this Court by the petitioner against the impugned order is that the Assessing Officer has confirmed the proposal solely based on the report filed by the Enforcement Wing Officers without applying his independent mind to the objections raised by the petitioner. Further grievance of the petitioner is that the Assessing Officer has not given personal hearing, when he has chosen to impose penalty under Section 27(3) of the Tamil Nadu Value Added

Tax Act, 2006.

4. However, the learned Government Advocate (Tax) for the respondent contended that the Assessing Officer has considered the objections and found that it is an after thought, as the Assessee has admitted the stock difference and paid the tax at the time of inspection. Insofar as the allegation on personal hearing is concerned, the learned Government Advocate fairly submitted that no such hearing was given to the petitioner.

5. Perusal of the impugned order would show that the Assessing Officer though extracted the objections filed by the dealer, has however chosen to reject the same as an after thought only on the reason that the Assessee has admitted the stock difference and paid the tax at the time of inspection. Needless to state that the report filed by the Inspecting Officials cannot be the sole basis for passing the order of assessment and at the best, it can be one of the material to do so. In other words, the Assessing Officer has to independently consider the objections raised by the petitioner as against the notice of proposal and thereafter, decide the merits of the matter. However, in this case, the Assessing Officer has not done so. Apart from the said aspect, it is also an admitted position that the Assessing Officer, who has chosen to impose penalty on the petitioner, has not given personal hearing to the petitioner before doing so. Therefore, on the above reasons, this Court is inclined to interfere with the impugned order, without going into the merits of the assessment.

6. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment after considering the objections raised by the petitioner by giving independent reasons and findings on the same. The Assessing Officer shall also provide an opportunity of personal hearing to the petitioner before concluding the assessment. The whole exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

The State Tax Officer
Gudiyatham (East) Circle
Gudiyatham,
Vellore District.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.78204
+1cc to the Special Government Pleader, S.R.No.78454

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SV(CO)
CS/10/12/2018