IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.15816 to 15820 of 2018
and
W.M.P.Nos.18796 to 18800 of 2018

Star Plastics
New No.171, Thambu Chetty Street,
1st & Iind Floor, Chennai - 600 001.
Rep. By its Authorised Signatory
.. Petitioner in all writ petitions

Versus

The Assistant Commissioner (ST),
Harbour Assessment Circle,
116, Angappanaicken Streetm 1st Floor,
Chennai - 600 001. .. Respondent in all writ petitions

Prayer in W.P.No.15816 of 2018: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondent and quash the impugned order in TIN:33820020544/2009-10 dated 31.05.2018, as far as the levy of tax and consequential penalty is concerned on the alleged estimated sales suppression of Rs.52,96,379/- with a direction to re-do the assessment by supplying the copy of document which is the main source of assessment and by affording an opportunity of personal hearing.

Prayer in W.P.No.15817 of 2018: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the respondent and quash the impugned order in TIN.3320020544/ 2010-11 dated 31.05.2018 as far as the levy of tax and consequential penalty is concerned on the alleged estimated sales suppression of Rs.8 19 534/- with a direction to re-do the assessment by supplying the copy of document which is the main source of assessment and by affording an opportunity of personal hearing and pass such further or other order as deem fit and proper and thus render Justice.

Prayer in W.P.No.15818/2018:

Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the respondent and quash the impugned order in TIN.3320020544/ 2011-12 dated 31.05.2018 as far as the levy of tax and consequential penalty is concerned on the alleged estimated sales suppression of Rs.14 72 365/- with a direction to re-do the assessment by supplying the copy of document which is the main source of assessment and by affording an opportunity of personal hearing and pass such further or other order as deem fit and proper and thus render justice.

Prayer in W.P.No.15819/2018:

Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the respondent and quash the impugned order in TIN.3320020544/ 2014-15 dated 31.05.2018 in respect of levy of tax and consequential penalty on the alleged estimated sales suppression of Rs.8 69 992/- with a direction to re-do the assessment by supplying the copy of document which is the main source of assessment and by affording an opportunity of personal hearing and pass such further or other order as deem fit and proper and thus render justice.

Prayer in W.P.No.15820/2018:

Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the respondent and quash the impugned order in TIN.3320020544/ 2016-17 dated 31.05.2018 with a direction to re do the assessment by considering each one of the objections raised by the petitioner and by affording an opportunity of personal hearing and pass such further or other order as deem fit and proper and thus render justice.

For Petitioner : M/S.MD.Ghafoor Ur Rahman
(in all W.Ps')

For Respondent : Ms.G.Dhanamadhri
(in all W.Ps') Government Advocate

COMMON ORDER

Heard Mr.MD.Ghafoor Ur Rahman, learned Counsel appearing for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate, appearing for the respondent and perused the materials on record including the parawise comments given by the respondent to the learned Special Government Pleader vide communication dated 17.07.2018.

2.It may not be necessary for this Court to make an elaborate exercise to find out as to whether the impugned Assessment order is proper or not in the light of the fact that the respondent did not afford an opportunity of personal hearing to the petitioner. Section 22 of the Tamil Nadu Value Added Tax Act deals with deemed assessment and procedure to be followed by the Assessing officer. Sub-section (4) of Section 22 states that if no return is submitted by the dealer for any period of the year or if the return filed is incomplete or incorrect or if not accompanied with any of the documents prescribed or proof of payment of tax, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of the judgment, subject to such conditions as may be prescribed, after the completion of that year. Proviso to Section 22(4) states that before taking action under sub-section 22, the dealer shall be given a reasonable opportunity of being heard.

3. Admittedly, this opportunity is not given to the petitioner as has been admitted by the respondent in the parawise comments furnished to the Special Government Pleader. This being a mandate, could not have been dispensed with. Apart from that, I find that the petitioner has been able to reconcile majority of the transactions and only few bills have to be reconciled, which according to the petitioner, are not transactions made by them. If the revision of assessment is based upon information recovered from the official website, then the respondent should follow J.K.M Graphics Solutions Pvt. Ltd., Vs. CTO, Veppery Assessment Circle reported in (2017) 99 VST 343.

4. Thus, for the above reasons, this Court is inclined to remand the matter for fresh consideration. Since major part of the proposals have been dropped after the receipt of the objections filed by the petitioner to the revision notices, this Court does not propose to set aside the impugned order. However, the petitioner is directed to treat the impugned assessment order as show-cause notice and wherever the relief has not been granted to the petitioner or their contentions has been rejected, the petitioner shall submit their objections to the same within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall specify the date and time for the appearance of the petitioner for personal hearing and after hearing the

petitioner, the respondent shall redo the assessment under those heads in accordance with law by a speaking order. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

gpa
To

The Assistant Commissioner (ST),
Harbour Assessment Circle,
116, Angappanaicken Streetm 1st Floor,
Chennai - 600 001.

+1 CC to Spl. Govt. Pleader(T) sr 48139

W.P.Nos.15816 to 15820 of 2018 and
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SVN(CO)
SP(01/08/2018)