IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.19561 & 19562 of 2018
and
W.M.P.No.22996 & 22997 of 2018

M/s. Akar Granites
rep. by its Proprietor R.Ananda Kumaran,
No.21, S.S.Nagar,
Chennai-600 044 ... Petitioner in both the W.Ps.

vs.

The State Tax Officer,
Pammal Assessment Circle,
Chennai - 600 044. ... Respondent in both the W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in TIN: 33600881249/2013-14 and TIN: 33600881249/2014-15 respectively dated 18.06.2018 to quash the same.

For Petitioner in both the Petitions : Mr.V.Sundareswaran

For Respondent in both the Petitions : Mrs.G.Dhana Madhri, Government Advocate (Tax)

COMMON ORDER

The petitioner is aggrieved against the orders of assessment dated 18.06.2018 passed in respect of the assessment years 2013-14 and 2014-15.

2. Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mrs.Dhana Madhri, the learned Government Advocate (Tax) appearing for the respondent.

3. These writ petitions are filed mainly by contending that the Assessing Officer has failed to follow the principles of natural justice. It is the specific case of the petitioner that the objections filed in response to the notice of proposal

were not at all considered and that personal hearing was also not given to the petitioner before concluding the assessment. Apart from raising the above objection on the ground of violation of principles of natural justice, the petitioner has also questioned the impugned assessment orders by raising very many grounds on merits of such assessment.

4. A common counter affidavit is filed by the respondent reiterating the stand taken in the impugned order.

5. This Court, at this stage, is not inclined to go into the merits of the assessment and the contentions raised by the petitioner on such merits, since this Court is convinced to set aside the impugned orders of assessment only on the ground that the same was passed in violation of principles of natural justice. The reasons are as follows:

It is seen that the Assessing Officer has issued notice of proposal for both assessment years on 27.03.2018. The petitioner has specifically claimed that they filed their objection to the above said notice which was received by the respondent on 28.05.2018. However, the Assessing Officer proceeded to conclude the assessment by passing the impugned orders by recording that the dealers/ authorised person has failed to file any reply in support of their claim of turn over liable to be assessed under Section 6 of the TNVAT Act, 2006. Though such stand was taken by the Assessing Officer in the impugned order, in the common counter affidavit filed in these writ petitions, the respondent has specifically admitted that the petitioner filed a reply dated 27.05.2018 putting forth their objections in respect of those two assessment years, in response to the notice of proposal dated 27.03.2018. Therefore, it is evident that the reply filed by the petitioner on 27.05.2018 was very much available on record at the hands of the respondent and however, the same was not taken into consideration while passing the impugned order of assessment on 18.06.2018. Thus, non application of mind of the Assessing Officer is apparent on the face of impugned order and the counter filed in these writ petitions. Therefore, the non-consideration of the reply and also not affording an opportunity of personal hearing to the petitioner certainly vitiates the entire proceedings, solely on the ground of violation of principles of natural justice in its strict sense.

6. Therefore, without going into the other merits of the matter, this Court is inclined to set aside the impugned orders and remit the matter back to the Assessing Officer to redo the assessment after considering the reply already filed by the petitioner and also after affording an opportunity of personal hearing.

7. At this juncture, the learned Government Advocate seeks permission of this Court to issue a fresh notice of proposal so that the Assessing Officer will cover all the issues in the fresh notice. If that is the case, it is open to the Assessing Officer to issue fresh notice of proposal to the petitioner.

8. Accordingly, these writ petitions are allowed and the impugned orders are set aside in the following terms:

a) The Assessing Officer shall issue a fresh notice of proposal to the writ petitioner within a period of two weeks from the ate of receipt of a copy of this order

b) On receipt of such notice of proposal, the petitioner shall file their objections within a period of two weeks thereafter.

c) On receipt of such objection, the Assessing Officer shall indicate the date of personal hearing to the petitioner in writing.

d) On completion of such personal hearing and considering the objections raised by the petitioner, the Assessing Officer shall pass a fresh order of assessment, on merits and in accordance with law, within a period of four weeks thereafter.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Vsi

To

The State Tax Officer,
Pammal Assessment Circle,
Chennai - 600 044.

+1cc to the Special Government Pleader Sr.67582
+1cc to Mr.V.Sundareswaran, Advocate Sr.67315

W.P.Nos.19561 & 19562 of 2018

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srg 10/10/2018