IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.25653 of 2018
and
W.M.P.No.29843 of 2018

Tvl.Sunraja Oil Industries Pvt.,Ltd.,
Represented by its Managing Director,
K.Gandhirajhan,
No.88/1, Puliyankadu, Moolakkarai,
Perundurai Erode, Nasiyanur, Erode - 638 107. ..Petitioner

Vs.

The Assistant Commissioner (ST),
Erode (Rural) Assessment Circle, Erode.
..Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARI, calling for the records on the files of the respondent in TIN:33762903126/2013-14 dated 13.04.2018 and quash the same.

For Petitioner : Mr.R.Senniappan

For Respondent : M/s.G.Dhana Madhri, Government Advocate

O R D E R

M/s.G.Dhana Madhri, learned Government Advocate takes notice for the respondent and 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 13.04.2018 passed in respect of assessment year 2013-14.

3. Heard both sides.

4. The main grievance of the petitioner before this Court is that the Assessing Officer, apart from not providing personal hearing to the petitioner, has also not considered the objections raised by the petitioner in a proper and perspective manner. It is further contended that the

objections filed as early as on 28.06.2016 was taken into account and an order of assessment passed after a period of nearly two years. Thus, it is contended that the assessment order impugned in this writ petition cannot be sustained, on the ground of violation of principles of natural justice.

5. The learned counsel for the petitioner further pointed out that the notice of proposal was issued by the earlier officer, before whom, the petitioner filed their reply and however, the present impugned order is passed by a different officer, without even giving an opportunity of hearing to the petitioner.

6. The learned Government Advocate appearing for the respondent though contended that the reply filed by the petitioner was examined by the Assessing Officer and thereafter, he has chosen to pass the present impugned order, however, fairly admitted that before concluding the assessment, the petitioner was not provided with an opportunity or personal hearing.

7. It is seen that in respect of assessment year 2013-2014, a pre assessment notice dated 28.06.2016 was issued to the petitioner. It is further seen that the petitioner had also given their reply on the very same day. However, the present impugned assessment order was passed after nearly two years, that too, without providing an opportunity of personal hearing to the petitioner, more particularly, when the respondent has chosen to impose penalty on the petitioner under Section 27(3) and 27(4) of the Tamil Nadu Value Added Tax Act, 2006. Needless to state that such personal hearing is mandatory, more particularly, when imposition of penalty is contemplated. Since such opportunity is not given to the petitioner and also by considering the fact that the reply made by the petitioner two years ago has been chosen to be considered by the present Assessing Officer, this Court is of the view that in all fairness, the respondent has to re-do the assessment once again, after giving due opportunity of personal hearing to the petitioner. At the same time, this Court makes it very clear that this Court is not expressing any view on the merits of the assessment, as it is for the respondent to consider and decide the same.

8. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the respondent to re-do the assessment after giving due opportunity of personal hearing to the petitioner. The respondent shall give notice of personal hearing to the petitioner, by indicating the date of such hearing, within a period of two weeks from the date of receipt of a copy of this order. On completion of such personal hearing, the respondent shall pass fresh order of assessment on merits and in accordance with law, within a period of four weeks thereafter.

No costs. Consequently, the connected miscellaneous petition is closed.

krk/mk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST),
Erode (Rural) Assessment Circle, Erode.

+1cc to Mr.R.Senniappan, Advocate S.R.No.68072
+1cc to the SPL. GP.(TAXES) S.R.No.68272

KR/17/10/18

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