IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.25460 & 25468 of 2018
and
WMP Nos.29621 & 29636 of 2018

M/s.TAFE Access Limited
Rep. by its Head Finance & Accounts
77, Nungambakkam High Road,
Chennai-600 034.

..Petitioner (in both WPs)

Vs.

The Assistant Commissioner (ST)
Valluvarkottam Assessment Circle
10, Palaniyappa Maligai
Greams Road, Chennai-600 006.

..Respondent (in both WPs)

Writ petition No.25460 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN:33151500696/2010-11 and quash the order dated 14.08.2018 passed therein and further direct the respondent to refund the sum of Rs.14,96,122/- paid as entry tax by the petitioner in respect of motor vehicles sold to Canteen Stores Department or in the alternative adjust the same against the tax liability of the petitioner under the TNVAT Act, 2006.

Writ petition No.25468 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in TIN:33151500696/2011-12 and quash the order dated 14.08.2018 passed therein.

For Petitioner :Mr.RL.Ramani
Senior Counsel for
Mr.E.Raveendran
(in both WPs)

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)
(in both WPs)

C O M M O N   O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondent. By consent of the parties, these writ petitions are taken up for final disposal at the admission stage itself.

2. Both these writ petitions are filed challenging the orders of assessment dated 14.08.2018 in respect of assessment years 2010-2011 and 2011-2012.

3. Heard the learned Senior Counsel appearing for the petitioner and the learned Government Advocate (Tax) appearing for the respondent.

4. The petitioner is a registered dealer and an Assessee before the respondent. In respect of the above said assessment years, notices of proposal were issued on 18.12.2015, proposing to impose tax and penalty. The petitioner filed their objections on 11.01.2016 in respect of assessment year 2010-2011 and on 08.03.2016 in respect of assessment year 2011-2012. In their reply, apart from disputing the proposal, they also sought for providing an opportunity to explain their stand before the Assessing Officer, prior to passing the orders of assessment.

5. The grievance of the petitioner before this Court is that no such opportunity was given to the petitioner, though it was specifically sought for. It is further contended that as the Assessing Officer has chosen to impose penalty, apart from levying tax, he is bound to afford an opportunity of personal hearing to the petitioner. The petitioner has specifically stated in the affidavit filed in support of the writ petition that though they filed their reply on 11.01.2016 in respect of assessment year 2010-2011 and sought for personal hearing to substantiate their contentions, the Assessing Officer without affording such opportunity has passed the impugned order, after a lapse of 24 months. Insofar as assessment year 2011-2012 is concerned, it is the specific contention of the petitioner that though the petitioner filed their reply on 08.03.2016 and appeared for personal hearing on 10.03.2016 and filed voluminous records, the respondent did not peruse the same on a single day and therefore, informed the petitioner that he will inform the next date of hearing for perusal of the records. Thus, it is stated that when the petitioner was under the impression that further notice for personal hearing will be given, all of a sudden, after nearly 2 years, the respondent has passed the impugned order.

6. Thus, the crux of the contention of the petitioner in both the cases is that no personal hearing was given in respect of assessment year 2010-2011 and no effective personal hearing was given in respect of assessment year 2011-2012.

7. The learned Senior Counsel appearing for the petitioner, apart from raising the above objections, has also contended that passing the orders nearly after a period of two years from the date of receipt of the objections itself is erroneous.

8. On the other hand, the learned Government Advocate for the respondent, after inviting this Court's attention to the impugned orders of assessment and based on instructions obtained from the respondent, specifically contended that personal hearing was given to the petitioner, which they failed to utilise, by placing material records. Therefore, she submitted that it is for the petitioner to work out their remedy, by filing a regular appeal.

9. Heard both sides.

10. The dispute is in respect of assessment orders passed relevant to assessment years 2010-2011 and 2011-2012. The main grievance of the petitioner is that no opportunity of personal hearing was given to the petitioner, more particularly, when the Assessing Officer has chosen to impose penalty. Perusal of the replies given by the petitioner clearly indicate that they sought for personal hearing. Equally, perusal of the impugned orders would also indicate that personal hearing was conducted on 10.03.2016 in both the cases. However, the petitioner has specifically disputed that no personal hearing was conducted in respect of the assessment year 2010-2011 and no effective personal hearing was conducted in respect of assessment year 2011-2012. The petitioner has also made specific allegation in the affidavit, as if the Assessing Officer has not perused the records on the date of personal hearing and he has asked the petitioner to come on another day, for which, separate communication will be sent. When such disputed question of fact is raised before this Court, more particularly, with regard to grant of personal hearing, this Court is of the view that, instead of probing the above issue further, by asking the respondent to file a counter affidavit, the interest of justice would be met, if one more opportunity is given to the petitioner, to have personal hearing, so that they can place all the records before the respondent, since it is specifically contended by the learned Senior Counsel appearing for the petitioner that all the relevant records are available with the petitioner to satisfy the Assessing Officer. However, this Court is also of the view that no such indulgence can be shown

to the petitioner, without putting them on some terms.

11. Accordingly, both these writ petitions are allowed and the impugned orders are set aside, without expressing any view on the merits of the contentions raised by both parties in respect of the assessment, but, only on the reason as stated supra. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment, after giving due opportunity of hearing to the petitioner subject to the condition that the petitioner shall pay 15% of the tax liability before the Assessing Officer, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such payment, the respondent shall intimate the date of personal hearing to the petitioner in writing. On the date of personal hearing, the petitioner shall appear and produce all the relevant records before the Assessing Officer. On completion of such personal hearing, the respondent shall pass fresh orders of assessment on merits and in accordance with law, within a period of four weeks thereafter. If the petitioner fails to make the payment of 15% of tax, as directed supra, the impugned orders get restored automatically. No costs. Connected miscellaneous petitions are closed.

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Sd/-
Deputy Registrar

// True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST)
Valluvarkottam Assessment Circle
10, Palaniyappa Maligai
Greams Road, Chennai-600 006.

+ 1 cc to the Spl.Govt.Pleader (Taxes), Sr 67147

+1cc to Mr.B.Raveendran, Advocate, S.R.No. 67121 (22/11/2018)

KR/5/10/18