IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.25469,25478,25482,25492,25493 & 25496 of 2018

and

W.M.P.Nos.29627,29641,29650,29672,29657 & 29660 of 2018

M/s. TAFE Reach Limited,
Rep. by its General Manager Finance,
35, Nungambakkam High Road,
Chennai - 600 034. ... Petitioner in all WP's

Vs

The Assistant Commissioner (ST),
Valluvarkottam Assessment Circle,
10, Palaniyappa Maligai,
Greams Road, Chennai - 600 006. ... Respondent in all WP's

Prayer in W.P.No.25469 of 2018:

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of CERTIORARI, calling the records of the respondent in TIN:33151502356/2009-10 and quash the order dated 27.08.2018 passed therein.

Prayer in W.P.No.25478 of 2018:

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of CERTIORARI, calling the records of the respondent in TIN:33151502356/2006-07 and quash the order dated 20.08.2018 passed therein.

Prayer in W.P.No.25482 of 2018:

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of CERTIORARI, calling the records of the respondent in TIN:33151502356/2007-08 and quash the order dated 20.08.2018 passed therein.

Prayer in W.P.No.25492 of 2018:

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of CERTIORARI, calling the records of the respondent in TIN:33151502356/2008-09 and quash the order dated 20.08.2018 passed therein.

Prayer in W.P.No.25493 of 2018:

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of CERTIORARI, calling the records of the respondent in TIN:33151502356/2010-11 and quash the order dated 27.08.2018 passed therein.

Prayer in W.P.No.25496 of 2018:

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of CERTIORARI, calling the records of the respondent in TIN:33151502356/2011-12 and quash the order dated 27.08.2018 passed therein.

For Petitioner : Mr.R.L.Ramani,
in all WP's Senior Counsel
for Mr.B.Raveendran

For Respondents: Mrs.G.Dhana Madhri,
in all WP's Government Advocate (Tax)

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. All these writ petitions are filed challenging the orders of assessment dated 27.08.2018 in respect of assessment year 2009-2010, dated 20.08.2018 in respect of assessment years 2006-2007, 2007-2008 & 2008-2009 and dated 27.08.2018 in respect of assessment years 2010-2011 & 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 17.12.2015, proposing to impose tax and penalty. The petitioner filed their objections on 25.08.2016 in respect of assessment years 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011 and on 27.08.2016 in respect of assessment year 2011-2012.

5. The grievance of the petitioner before this Court, as specifically stated in their affidavit, is that though they filed their objections on 25.08.2016 and 27.08.2016 and produced the records for all the assessment years, the respondent did not peruse the same on a single day, since the records being voluminous 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 orders.

6. Thus, the crux of the contention of the petitioner in all the writ petitions is that though they appeared in person on 25.08.2016 and 27.08.2016 and produced the records, no effective personal hearing was given in respect of assessment years viz., 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012 and on the other hand, the Assessing Officer assured for providing such personal hearing on another day, which he failed to provide.

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 viz., 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012. The main grievance of the petitioner is that no effective personal hearing was given to the petitioner, more particularly, when the Assessing Officer has chosen to impose penalty. Perusal of the impugned orders would indicate as if a personal hearing was conducted on 25.08.2016 in all the cases. However, the petitioner has specifically disputed that no effective personal hearing was conducted in respect of all assessment years. 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, all 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.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mk

To

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

+1cc to Mr.B.Raveendran, Advocate Sr.67120
+1cc to the Special Government Pleader Sr.67148

W.P.No. 25469,25478,25482,
25492,25493 & 25496 of 2018

sv[co]
srg 16/10/2018