IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.25651 of 2018
and
WMP No.29835 of 2018

J.P.G.Housing and Projects Pvt. Ltd.,
Represented by its Managing Director
M.J.Gopinathan
..Petitioner

Vs.

The Assistant Commissioner (ST)
Avinashi Circle,
Avinashi-641 654. ..Respondent

Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein in TIN 33962084336/2011-2012 dated 27.08.2018 and quash the same.

For Petitioner: Mr.N.Inbarajan
For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. 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 27.08.2018 passed in respect of the assessment year 2011-2012.

3. The learned counsel for the petitioner contended that the Assessing Officer has not at all considered the objections filed by the petitioner in response to the notice of proposal, in a proper and perspective manner. He further contended that when the Assessee, in their reply, has specifically requested the Assessing Officer to give an opportunity to produce the documents in support of their case, without granting such opportunity, the assessment was completed. Therefore, he contended that the impugned assessment order cannot be sustained, as the same is an outcome of non-application of mind

to the material documents. His last submission is on the personal hearing. The learned counsel contended that the Assessing Officer has not given an opportunity of personal hearing to the petitioner, more particularly, when he has chosen to impose penalty at 150% under Section 27(3) of the Tamil Nadu Value Added Tax Act, 2006. Thus, the learned counsel prays for interference of the impugned order of assessment.

4. On the other hand, the learned Additional Government Pleader appearing for the respondent submitted that the Assessing Officer has considered the objections filed by the petitioner in detail and thereafter, concluded the assessment, by rejecting the objections. Therefore, he submitted that the petitioner was given sufficient opportunity to put forth their case and when they failed to furnish material documents, the Assessing Officer cannot be faulted in passing the impugned assessment order. Even though, he contended so, the learned Additional Government Pleader is not disputing the fact that the Assessing Officer has not afforded an opportunity of personal hearing to the petitioner.

5. Heard both sides.

6. The present writ petition is filed challenging the order of assessment dated 27.08.2018 passed in respect of the assessment year 2011-2012. Though very many contentions are raised by the learned counsel for the petitioner, touching upon the merits of the assessment order, this Court is not inclined to go into such contentions and express any view, as it is convinced to interfere with the impugned assessment order, only on the ground that the same was passed in violation of principle of natural justice, more particularly, by not affording an opportunity of personal hearing to the petitioner, as the Assessing Officer has also chosen to impose penalty under Section 27(3) of the Tamil Nadu Value Added Tax Act, 2006. In fact, Circular No.7 of 2014 dated 03.02.2014 issued by the Principal Secretary/Commissioner of Commercial Taxes, Chennai-5, stipulates that such personal hearing is invariably to be afforded to the dealer, irrespective of whether the dealer has opted for personal hearing or not. This Court has also considered the effect of the said circular in several writ petitions and found that the non-compliance of the said Circular vitiates the proceedings. Therefore, only on the ground of non-compliance of personal hearing to the petitioner, this Court is inclined to interfere with the impugned order of assessment and remit the matter back to the Assessing Officer, to re-do the assessment, after giving such opportunity of personal hearing to the petitioner.

7. Accordingly, this writ petition is allowed and the impugned order of assessment is set aside. Consequently, the mater is remitted back to the Assessing Officer to re-do the assessment, after giving due opportunity of personal hearing to the petitioner. It is open to the petitioner to raise all the objections before the Assessing Officer, as raised before this Court, during personal hearing. After completion of such personal hearing, the Assessing Officer shall pass fresh assessment order on merits and in accordance with law. The whole exercise shall be completed by the respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Cs IX)

//True Copy//

Sub Assistant Registrar

mk
To
The Assistant Commissioner (ST)
Avinashi Circle,
Avinashi-641 654.

+1cc to Government Pleader SR.NO.67930

sm:10.10.2018