IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

WP.Nos.25971, 25978, 25982 & 25990 of 2018
and
WMP Nos.30181, 30186, 30189, & 30197

Maruthi Engineering Works
Represented by its Proprietor
P.C.Jeyavel ..Petitioner
(in all WP's)

Vs

The State Tax Officer
Ranipet (SIPCOT)
Ranipet. ..Respondent
(in all WP's)

Writ Petition No.25971 of 2018 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:33944362295/2011-2012 dated 29.08.2018 and quash the same.

Writ Petition No.25978 of 2018 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:33944362295/2012-2013 dated 29.08.2018 and quash the same
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Writ Petition No.25982 of 2018 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:33944362295/2013-2014 dated 29.08.2018 and quash the same.

Writ Petition No.25990 of 2018 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:33944362295/2014-2015 dated 29.08.2018 and quash the same.

For Petitioner : Mr.N.Inbarajan
(in all WP's)

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

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 parties, these main writ petitions are taken up for final disposal at the admission stage itself.

2. In all these writ petitions, the petitioner, who is one and the same, is aggrieved against the orders of assessment passed in respect of the assessment years 2011-2012 to 2014-2015.

3. Heard both sides.

4. These writ petitions are filed challenging the orders of assessment mainly by contending that the Assessing Officer, apart from violating the principles of natural justice, by not providing an opportunity of personal hearing to the petitioner, has also erred in merely accepting the report filed by the Enforcement Officials, without independently applying his mind to the objections raised by the petitioner in pursuant to the notices of proposal. Apart from raising the above common grounds in these writ petitions, an additional ground is raised insofar as the assessment year 2011-2012 is concerned, by contending that the very initiation of proceedings under Section 27 of the Tamil Nadu Value Added Tax Act, 2006, was beyond the period of limitation. It is the contention of the petitioner that five years limitation period referred to in the relevant provision having expired on 31.10.2017, issuing notice of proposal on 13.11.2017 itself is barred by limitation.

5. The learned Government Advocate appearing for the respondent contended that the respondent has considered the objections filed by the petitioner and thereafter, passed the impugned orders. Therefore, she submitted that the petitioner cannot make a complaint, as though the respondent has violated the principles of natural justice.

6. Even though it is stated so, the learned Government Advocate fairly admitted that no personal hearing was given to the petitioner before concluding the assessment. Insofar as the limitation question raised by the petitioner in respect of the assessment year 2011-2012 is concerned, the learned Government Advocate contended that the notices issued on 13.11.2017 were well within time, in view of the amendment made in the year 2012.

7. The orders of assessment pertains to the above relevant period were passed after issuing notices to the petitioner. There is no dispute to the fact that the petitioner has filed the reply to such notices of proposal. The reply was rejected by the respondent, as an after thought, only by stating that the dealers have admitted every issue before the Inspecting Authorities at the time of inspection. In other words, the

Assessing Officer has only taken into consideration of the Inspection Report filed by the Inspecting Authorities and not applied his independent mind to the reply submitted by the petitioner to each issues. In my considered view, the Assessing Officer cannot solely depend upon the Inspection Report and conclude the assessment by brushing aside the objections raised by the petitioner as an after thought, without applying his independent mind to those objections and give any finding on the same. Apart from the above said flaw, it is also seen that the Assessing Officer has not afforded an opportunity of personal hearing to the petitioner, especially, when he has chosen to impose penalty under Section 27(3) of the TNVAT Act, 2006. At this juncture, it is useful to refer to the Circular No.7/2014 dated 03.02.2014, wherein, it is contemplated that granting of personal hearing is mandatory and the same shall invariably be afforded to the dealer irrespective of whether the dealer has opted for such personal hearing or not. Therefore, on the above stated facts and circumstances, this Court is inclined to interfere with the impugned orders of assessment and remit the matter back to the Assessing Officer to re-do the assessment once again on merits and in accordance with law, after giving due opportunity of personal hearing to the petitioner and by considering the objections raised by the petitioner with independent application of mind. Insofar as the jurisdictional issue raised in respect of the assessment year 2011-2012 is concerned, this Court is not inclined to express any view at this stage, as this Court is remitting the whole matter back to the Assessing Officer for re-doing the same on merits and in accordance with law. Needless to state that it is for the petitioner to raise such objections on jurisdiction before the said Assessing Officer and the same shall be considered by the Assessing Officer, while considering the other issues.

8. Thus, all these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Officer on the following terms and conditions:

> (a) The petitioner shall furnish an additional reply, if any, within a period of two weeks from the date of receipt of a copy of this order.
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> (b) On receipt of such reply, the Assessing Officer shall intimate the date of personal hearing to the petitioner.
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> (c) On completion of such personal hearing and after considering the objections raised by the petitioner independently, the Assessing Officer shall pass fresh orders 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-II)

//True copy//

Sub Assistant Registrar

mk

To

The State Tax Officer
Ranipet (SIPCOT)
Ranipet.

+1cc to Mr.N.Inbarajan, Advocate SR.No.68358

+1cc to Government Pleader SR.No.68594

W.P.Nos. 25971, 25978,
25982 & 25990 of 2018

GMY(17/10/2018)