IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 10.10.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.26685 of 2018

Tvl Professional Touch,
Rep. by its Proprietrix,
P.Neerajakshi,
No.9/36, Gandhi Mandapam Road,
Kotturpuram,
Chennai 600 085. ..Petitioner

Vs.

The State Tax Officer,
Kotturpuram Assessment Circle,
Chennai 600 085. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records in CST 771755/2004-2005 dated 30.08.2018 on the file of the respondent and quash the same as illegal and contrary to law and direct the respondent to furnish the copy of the returns for the assessment year 2004-2005 CST to the petitioner.

For Petitioner : Mr.A.Thiagarajan
Senior Counsel
for Mr.M.Nalla Thambi

For Respondents : 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, the writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner is aggrieved against the order of assessment dated 30.08.2018 passed in respect of the assessment year 2004-05. The petitioner is a registered dealer and an assessee on the file of the respondent. In respect of the assessment year 2004-05, a notice of proposal dated 26.05.2006 was issued to the petitioner for assessing the turnover of the petitioner at 12% in respect of purchase of spares from unregistered dealers and at the rate of 20% for sales of imported copiers. The petitioner filed a writ petition in W.P.No.35398 of 2006 for declaration to declare Serial No.8 of Part G to the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 as introduced by Tamil Nadu Act 22 of 2002, as ab intio void and ultra vires of Articles 14, etc., of the Constitution of India. However, the said writ petition was dismissed on 24.10.2017. Thereafter, the second notice of proposal was issued on 22.05.2018, proposing to levy tax at 21% for the turnover in the absence of Form C declaration. The petitioner sought time by stating that he had undergone surgery. Again, another notice dated 03.07.2018 was issued calling upon the petitioner to appear for hearing along with a written representation with necessary documents. The petitioner sent a reply on 23.07.2018 stating that all the records kept in their office along with copies of returns and 'C' forms were washed away in the floods occurred in the year 2015 and therefore, the petitioner requested to furnish copies of the returns and also to provide personal hearing in order to follow up and obtain duplicate 'C forms from the buyers in other state. The Assessing Officer, however passed the impugned order of assessment by imposing tax at the rate of 21%.

3. Mr.A.Thiagarajan, learned Senior Counsel appearing for the petitioner submitted that the petitioner was prevented from making an effective reply to the notice of proposals dated 03.07.2018 and 30.08.2018, as they are not in possession of the records pertaining to the assessment year 2004-05, as the entire records were washed away in the flood during the relevant point of time. Therefore, he contended that the Assessing Officer ought to have furnished a copy of the return to the petitioner so as to enable them to get duplicate 'C' form from buyers in other State and thereafter to furnish the reply accordingly. Since such opportunity was not given to the petitioner, the learned Senior Counsel contended that the impugned order cannot be sustained, as the same was passed without considering the case of the petitioner.

4. Per contra, Mr.M.Hariharan, learned Additional Government Pleader contended that when the petitioner was given sufficient opportunity, they have not filed the reply with necessary documents and therefore, the Assessing Officer is not at fault in completing the assessment. Even though he has contended so, he is not disputing the fact that the petitioner sent a letter dated 23.07.2018 and sought for furnishing copy of the return and enclosures.

5. Heard both sides.

6. The Assessing Officer has completed the assessment and passed the impugned order without any reply from the petitioner

with supportive documents. Non filing of such reply with supportive documents is explained by the petitioner, as stated supra. It is also seen from the petitioner's request made on 23.07.2018 that they sought for furnishing copy of returns and enclosures so as to enable them to collect the duplicate C-Form from buyers in other state, since the entire records were washed away in the flood took place in the year 2015. When such being the case of the petitioner, I am of the view that the Assessing Officer ought to have given one more opportunity by furnishing the copy of the returns and enclosures to the petitioner so as to enable them to file their reply with supportive documents. In this case, even though the Assessing Officer has referred to the letter given by the petitioner dated 23.07.2018, has, however, not given any reason as to why he has rejected such request. Therefore, I find that the matter has to go back to the Assessing Officer for redoing the assessment once again after giving sufficient opportunity to the petitioner, as stated below.

7. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer under the following terms and conditions:

a) The Assessing Officer shall furnish a copy of the return and enclosures filed by the petitioner in respect of the subject matter assessment year, within a period of two weeks from the date of receipt of a copy of this order;

b) On receipt of such copy of return and enclosures, the petitioner shall file their reply with supportive documents within a period of four weeks thereafter;

c) On receipt of such reply and the supportive documents, the Assessing Officer shall intimate the date of personal hearing.

d) On completion of personal hearing, the Assessing Officer shall pass fresh orders on merits and in accordance with law within a period of four weeks thereafter.

No costs.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer,
Kotturpuram Assessment Circle,
Chennai 600 085.

+1cc to Mr.M.Nalla Thambi, Advocate S.R.No.70212

KR/24/10/18 W.P.No.26685 of 2018