IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos. 28569 & 28573 of 2018
in
W.M.P.Nos. 33325 & 33335 of 2018

Tvl. Sivasakthi Medicals,
Represented by its Proprietor P.Selvaraj,
No.64/H, Katchery Street,
Vallarai Gate, Velur Road,
Tiruchengode – 637 231. ...Petitioner
(in both W.Ps)

vs.

1. The Deputy State Tax Officer,
Tiruchengode (Town).

2. The State Tax Officer,
Tiruchengode (Town) Circle. ...Respondents
(in both W.Ps)

Writ Petition 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 second respondent in TIN:33063181804/2014-15 and TIN:33063181804/2015-16 dated 19.09.2018 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
(in both WPs)
For Respondents : Mr.M.Hariharan
Additional Government Pleader
(in both WPs)

C O M M O N O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondents. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the orders of assessment dated 19.09.2018 passed in respect of assessment year 2014-2015 and 2015-2016.

3. In both these writ petitions, the common grievance expressed by the petitioner is that the Assessing Officer did not comply with the principles of natural justice while passing the orders of assessment. It is the specific contention of the petitioner that even though a request was made to grant 15 days time to make personal appearance, the Assessing Officer without informing the petitioner about the date of personal hearing, has passed the impugned order as though the petitioner did not file their objections or appeared for personal hearing.

4. The learned Additional Government Pleader, on the other hand, submitted that even though an opportunity was given to the petitioner to appear in person within the notice time of 10 days, they have not appeared in person and therefore, the Assessing Officer is left with no other option except to pass the impugned orders of assessment.

5. Heard both sides and perused the materials placed before this Court.

6. It is seen that the Assessing Officer issued the notice of proposal on 21.06.2018, wherein, he has stated that the petitioner can also avail an opportunity being heard in person on any working day within the period of 10 days. Therefore, it is evident that the exact date of personal hearing is not indicated by the Assessing Officer. Even otherwise, it is an admitted fact that the petitioner has filed an adjournment letter and sought for 15 days time. The said fact is evident from the orders of assessment. However, the Assessing Officer has not informed the petitioner as to whether the said request was considered or rejected. Therefore in the absence of any communication from the Assessing Officer, the petitioner is justified in not making their appearance before the Assessing Officer, since the date of such hearing was not intimated to the petitioner in writing. The very same issue was considered by this Court in W.P.No.5717 of 2017 and an order was passed on 08.03.2017, wherein, it is stated as:

> "8.Needless to say that when a request is made by the petitioner seeking for extension of time by way of writing, such request has to be considered and decided either by accepting or rejecting the same and such decision has to be duly communicated to the assessee by fixing a next date of hearing so as to enable such assessee to be prepared for appearance on that day for completion of the assessment proceedings. In the above

referred decision relied on by the learned counsel for the petitioner cited supra, the very same issue was considered and found that the request for extension of either granted or rejected should be intimated then and there. In this case, admittedly, no such intimation was given to the petitioner, even assuming that the request of the petitioner was accepted by the Assessing Authority. Needless to say that unless the petitioner is informed of the decision on their request for extension, they cannot be expected to proceed further either this way or that way. Therefore, I find that the assessment order passed without intimating the decision taken on the request for extension of time, is in violation of the principles of natural justice and therefore on that ground alone, the assessment order has to be set aside, without going into any of the merits of the assessment. Accordingly, the writ petition is allowed. The impugned order of assessment is set aside and the matter is remitted back to the respondent for passing fresh order of assessment after giving due opportunity of hearing to the petitioner. The petitioner should cooperate with the assessment proceedings without dragging the matter by way of filing applications one after another seeking for extension without there being any justifiable cause. The respondent shall intimate the next date of hearing to the petitioner. On receipt of such notice, the petitioner should appear with all necessary documents and allow the Assessing Officer to complete the assessment proceedings. Entire exercise shall be done by the respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petitions are closed."

7. Considering the above stated facts and circumstances, I am of the view that the matter has to go back to the Assessing Officer for reconsidering the whole issue after giving due opportunity of personal hearing to the petitioner exactly intimating the date of such hearing, more particularly, when the Assessing Officer has proposed to impose penalty also under Section 27(3)(c) of the Tamil Nadu Value Added Tax Act, 2006. Accordingly, both these writ petitions are allowed and the impugned orders are set aside under the following terms and conditions:

(a) The Assessing Officer shall intimate the date of personal hearing to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such intimation, the petitioner shall file their objections and also appear before the Assessing Officer on the date so fixed for personal hearing.

(c) Thereafter, the Assessing Officer shall pass the orders of assessment on merits and in accordance with law within a period of six weeks thereafter.

No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sni/mk

To

1. The Deputy State Tax Officer,
   Tiruchengode (Town).

2. The State Tax Officer,
   Tiruchengode (Town) Circle.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.76313

+1cc to the Spl Government Pleader, S.R.No.76193

W.P.Nos.28569 & 28573 of 2018

MG(CO)
GSP(23/11/2018)