IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.29021 of 2018
and
W.M.P.No.33926 of 2018

Tvl.M.B.Vir Enterprises
rep. By its Proprietrix,
Mrs.Pushpadevi
No.44/28, E.K.Agraharam,
Chennai-3. ..Petitioner

vs.

The Commercial Tax Officer,
Moore Market Assessment Circle,
Wavoo Mansion, Rajaji Salai,
Chennai - 600 001. ..Respondent

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN/33140361000/2013-14 dated 07.09.2017 and quash the same as illegal, arbitrary and contrary to law and principle of natural justice and further direct the respondent to consider the documents and complete the assessment based on the law laid down by this Court in JKM graphics Solution Pvt. Ltd., (99 VST 343) by providing an opportunity of being heard.

For Petitioner : Mrs.C.Rekha Kumari

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For Respondents : Mrs.G.Dhana Madhri,Govt.Advocate(T)

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate(Tax) takes notice for the respondent.

2. The petitioner is aggrieved against the order of assessment dated 07.08.2018 passed in respect of assessment year 2013-14.

3. The grievance of the petitioner before this Court against the respondent is that no opportunity of personal hearing was given before passing the impugned order, more particularly, when the respondent has chosen to levy penalty under section 27(4) of Tamilnadu Value Added Tax Act, 2006. It is further contended that a notice of proposal was given on 09.01.2015 and the petitioner made their reply immediately on on 09.03.2015 and 12.03.2015, whereas the respondent has chosen to pass the impugned order after a period of three years, that too, by a different Officer.

4. On the other hand, learned Government Advocate submitted that the impugned order of assessment was passed after considering the reply submitted by the petitioner and therefore, the petitioner cannot have any grievance. However, she is not disputing the fact that the petitioner was not afforded with any personal hearing.

5. It is seen that the notice of proposal was issued as early as on 09.01.2015 and the petitioner has also filed their reply on 09.03.2015 and 12.03.2015. However, the impugned order is passed after a period of three years, without there being any valid reason for not doing it immediately. As it is contended that the present Officer who passed the impugned order is not the same Officer who issued the notice and that the respondent has also not given an opportunity of personal hearing, this Court is of the view that the matter has to go back to the Assessing Officer to reconsider the issue once again afresh. At the same time, considering the fact that the petitioner has approached this Court after a period of one year from the date of the impugned order, the above indulgence cannot be shown without putting the petitioner on terms.

6. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remitted back to the respondent on the following terms and conditions.

a) The petitioner shall pay 15% of the tax liability within a period of two weeks from the date of receipt of a copy of this order.

b) On receipt of such tax liability, the respondent shall give an opportunity of personal hearing to the petitioner and thereafter pass the order of assessment on merits and in

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accordance with law within a period of six weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

vsi

To

The Commercial Tax Officer,
Moore Market Assessment Circle,
Wavoo Mansion, Rajaji Salai,
Chennai - 600 001.

+1cc to M/s.C.Rekhakumari, Advocate SR.No.75149

+1cc to Special Government Pleader Taxes SR.No.76189

W.P.No.29021 of 2018

MG (CO)

GMY(26/11/2018)

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