IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.30803, 30806, 30808 & 30810 of 2018
and
WMP.Nos.35944, 35948, 35950 & 35951 of 2018

Tvl.Shree Ayyappa Jewellery Pvt. Ltd.,
Represented by its Director Mr.S.V.Ramesh,
No.45, Jain Mohammed Street,
Annasalai, Chennai-600 002. ..Petitioner (in all WPs)

Vs

The State Tax Officer
Pondy Bazaar Assessment Circle
Chennai-600 028. ..Respondent (in all WPs)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, Calling for the records of the respondent vide his order of assessment in TIN 33821522589/2012/2013, 2013-2014, 2014-2015 and 2015-2016 dated 28.09.2018 and quash the same as illegal, unconstitutional for having been passed in violation of principles of natural justice and as being contrary to that of the principles laid down by this Court in the case of Tvl.Salem Hotel Sri Saravana Bhavan (P) Ltd., Vs. The Assistant Commissioner (CT) Arisipalayam Assessment Circle, Salem in WP.No.35815 of 2016 dated 21.10.2016 and in WP No.105/2016 dated 01/03/2017 in the case of M/s.Graphics Solutions (P) Ltd., Vs.The Commercial Tax Office, Veperry Assessment circle, Chenai, in WP.No.30808 and 30810/2018, and further direct the respondent to pass fresh orders in accordance with law after granting the petitioner with an opportunity of personal hearing.

For Petitioner : Mr.R.Ganesh Kanna

For Respondents : Mrs.G.Dhana Madhri
Government Advocate (T) in all WP's

C O M M O N O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate 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 28.09.2018 passed in respect of the assessment years 2012-2013 to 2015-2016.

3. These assessment orders are challenged before this Court mainly by raising two grounds. Firstly, it is the grievance of the petitioner that the Assessing Officer having chosen to impose penalty, has however, not given an opportunity of personal hearing to the petitioner. Secondly, it is contended that insofar as the assessment years 2014-2015 and 2015-2016 are concerned, the very notice of proposal referring to mis-match issue was without any material details and particulars and therefore, the petitioner was reasonably prevented from making an effective reply to the said notice insofar as the said issue of mis-match is concerned.

4. The learned counsel for the petitioner invited this Court's attention to the notices of proposal dated 30.07.2018, more particularly, in respect of the assessment years 2014-2015 and 2015-2016 and pointed out that the said notices do not contain the material details with regard to mis-match issue.

5. On the other hand, the learned Government Advocate for the respondent submitted that the petitioner is not entitled to contend as though they were not given an opportunity of personal hearing when the notices of proposal themselves informed the petitioner that they may avail such opportunity, if opted so, at any time during office hours within the period of notice time. Therefore, she contended that the petitioner having not opted to appear on any one of those days, they are not entitled to contend otherwise. Insofar as the other objections with regard to mis-match issue is concerned, the learned Government Advocate submitted that the Assessing Officer has dealt with the said issue in the impugned orders with materials details and particulars, after considering the objections raised by the petitioner. The learned Government Advocate has also contended that since huge tax and penalty liability is fastened on the petitioner, the impugned orders need not be interfered with.

6. Heard both sides.

7. Let me first consider the objections with regard to the personal hearing. It is true that the notice of proposal given to the petitioner for each assessment years informed the petitioner that they may avail an opportunity of personal hearing, if opted so, at any time during office hours within the period of notice time of 10 days. This Court has already considered the very same objections raised by the Revenue in various other cases and found that such indication itself is not enough, that too, while issuing the notice of proposal itself, without informing the exact date of personal hearing to the

petitioner in writing after receipt of the reply. At this juncture, it is relevant to refer to a Circular issued by the Revenue in Circular No.7 of 2014. I myself considered the scope of Circular No.7/2014 in WP.No.6868 to 6874 of 2017 dated 21.03.2017 wherein at Paragraph Nos. 9, 10 & 11, it has been observed as follows:-

> "9. At this juncture, it is useful to refer to the Circular issued by the office of the Principal Secretary / Commissioner of Commercial Taxes, Chepauk, Chennai-6 in Circular No.7/2014, wherein, it is observed as follows:
>
> a) Passing of Orders:
>
> Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process.
>
> (i) After issue of notice calling for the objections, if any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may be only it, there exists a genuine reason.
>
> (ii) Objections filed by the dealer on the pre-assessment/revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised, in short, the speaking order which is complete shall be passed.
>
> (iii) As the provision in the TNVAT Act stipulates the condition of granting of personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not.
>
> 10. Going by the above Circular issued by the Department and considering the fact that the pre-assessment notices and revised notices suggested, as though the petitioner is entitled for a personal hearing, the question that is to be gone into and decided in this case is as to whether the petitioner was really afforded such opportunity. As I pointed out earlier, the respondent has not intimated the petitioner about the date of personal hearing in pursuant to the objections filed by them. When such being the

factual position, the only conclusion that can be arrived is that the respondent though stated that an opportunity of personal hearing would be given to the petitioner, has, infact, not afforded such opportunity to the petitioner by not informing the date of such hearing. Therefore, it is evident that the petitioner was not given such personal hearing and consequently, as rightly argued by the learned counsel for the petitioner, the impugned orders of assessment suffers on the ground of violation of natural justice.

11. Accordingly, this Court is satisfied to set aside the order of assessment only on the ground of violation of principles of natural justice, without going into any of the merits of the contentions raised by the parties on the orders of assessment. Consequently, the writ petitions are allowed and the impugned orders of assessment are set aside and the matter is remitted back to the respondent for passing fresh orders of assessment, after affording opportunity of personal hearing to the petitioner by indicating the exact date of such hearing. After hearing the petitioner and considering all the aspects, the respondent shall pass fresh orders of assessment on its own merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order."

8. Therefore, this Court is of the view that when admittedly, the petitioner was not given any communication indicating the exact date of personal hearing, after filing their reply to the notice of proposal, the impugned orders passed, admittedly imposing penalty as well, cannot be sustained on the sole ground of violation of principles of natural justice.

9. Further, as pointed out by the petitioner insofar as the assessment years 2014-2015 and 2015-2016 are concerned, the notice of proposal though contains several issues, one of such issue viz., mis-match issue was referred to without there being any material details and particulars. In fact, the notice of proposal only referred the mis-match issue as "The ITC on the purchases detected (through official web) to be mis-matched, was proposed to be disallowed." Needless to say that the above issue referred to in the notice of proposal is bereft of material particulars. Even otherwise, this Court has already considered and decided as to how the mis-match issue has to be handled by the Assessing Officer, while passing the orders of assessment, in the common order passed by this Court in

WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343). Therefore, the Assessing Officer has to necessarily follow the guidelines/directions issued in the said order while making the orders of assessment in respect of mis-match issue. In this case, the orders of assessment were passed on 28.09.2018, much later to the common order passed in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343). Hence, the Assessing Officer ought to have followed those guidelines/directions. Therefore, in the absence of such procedure, while dealing with mis-match issue, this Court is left with no other option, except to remit the matter back to the Assessing Officer to re-do the assessment once again, after issuing fresh notice to the petitioner insofar mis-match issue is concerned. However, such indulgence cannot be shown to the petitioner except by putting them on some terms for the following reasons.

10. It is seen from the notices of proposal dated 30.07.2018 that already earlier notices were issued to the petitioner on 12.01.2017 and served on them on the very same day and that the petitioner had not filed any reply to the said notices. In fact, the said notices are also placed in the typed set of papers. Therefore, it is evident that the said notices having been received by the petitioner as early as on 12.01.2017 and having not been replied till the present notices dated 30.07.2018 were issued, there is every possibility for the Assessing Officer to make a presumption as though the Assessee has accepted the proposal referred to in the notice dated 12.01.2017. Therefore, for the lapse on the part of the petitioner in not sending the reply to the notices dated 12.01.2017 and for waiting the Assessing Officer to issue fresh notices on 30.07.2018, the petitioner has to make some payment towards the tax liability without prejudice, so as to enable the Assessing Officer to re-do the assessment once again as observed supra.

11. Accordingly, 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 under the following terms and conditions:

(a) The petitioner shall pay 15% of the tax liability for each assessment year before the Assessing Officer within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such payment, the

Assessing Officer shall issue fresh notice of proposal insofar as mis-match issue is concerned in respect of the assessment years 2014-2015 and 2015-2016 with materials details and particulars.

(c) The petitioner is directed to file their reply to the said notice of proposal with all supportive documents.

(d) On receipt of the reply from the petitioner, the Assessing Officer shall fix the date of personal hearing and inform the same to the petitioner in writing.

(e) On completion of such personal hearing, the Assessing Officer shall pass fresh orders of assessment on merits and in accordance with law, as this Court is not expressing any view on the merits of the assessment.

(f) While considering the mis-match issue, the Assessing Officer shall follow the guidelines/directions issued in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343).

(g) The whole exercise shall be done by the Assessing Officer within a period of ten weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mk

To

The State Tax Officer
Pondy Bazaar Assessment Circle
Chennai-600 028.

+4cc to Mr.A.Ravi Chandran, Advocate SR.No.80834

+1cc to Special Government Pleader SR.No.80885

WP.Nos.30803, 30806,
30808 & 30810 of 2018

RR(CO)
GMY(20/12/2018)