IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.31906 & 31909 of 2018
and
WMP.Nos.37139 & 37143 of 2018

Kasa Anlagen India Private Limited
Represented by its Director,
M.S.Balaji,
18, SIDCO Industrial Estate,
Thirumudivakkam,
Chennai-44 ..Petitioner (in both W.Ps)

Vs

The State Tax Officer,
Thirumudivakkam Assessment Circle,
32 & 33, Sripuram 2nd Street,
Thiruneermalai Main Road,
Chennai-44 ..Respondent (in both W.Ps)

Writ Petition No.31906 of 2018 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 33820884329/2014-2015 dated 31.10.2018 and quash the same and direct the respondent to pass appropriate orders on the petition dated 30.08.2018.

Writ Petition No.31909 of 2018 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 33820884329/2015-2016 dated 31.10.2018 and quash the same and direct the respondent to pass appropriate orders on the petition dated 30.08.2018.

For Petitioner : Mr.R.Kumar
For Respondent : Mr.V.Haribabu
Additional Government Pleader(T)

COMMON ORDER

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

2. These writ petitions are filed challenging the orders dated 31.10.2018 in dismissing the rectification petitions filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 in respect of the assessment years 2014-2015 and 2015-2016.

3. The notice of proposal were issued to the petitioner for revising the assessment in respect of assessment years 2014-2015 and 2015-2016 dated 31.05.2017 and 04.07.2017 respectively. The said notices contain several issues based on which, the Assessing Officer had proposed to impose tax and penalty on the petitioner. The petitioner filed their reply dated 20.04.2018 for both the assessment years and the same was received by the Assessing Officer on 21.05.2018. The petitioner, through their reply, disputed the proposals and requested the Assessing Officer to drop the same. However, the Assessing Officer passed the orders of assessment on 31.05.2018, confirming the proposals which include penalty.

4. The grievance of the petitioner against the said orders of assessment is that the same was passed without affording an opportunity of personal hearing to the petitioner and thus, it violates the principles of natural justice. It is contended that, had the Assessing Officer given an opportunity of personal hearing, the petitioner would have satisfied the Assessing Officer with further documents, to substantiate that the proposals are not sustainable. By contending so, the petitioner has preferred petitions under Section 84 of the TNVAT Act, 2006, to rectify the mistake. Those two petitions are rejected by the present impugned orders. The Assessing Officer has chosen to reject the petitions filed under Section 84 of the TNVAT Act, 2006, mainly on the ground that the petitioner, who sought to produce certain documents at the time of hearing the petitions filed under Section 84 of the TNVAT Act, 2006, had failed to produce the same during the proceedings for revision of assessment.

5. The learned counsel for the petitioner submitted that the very fact the Assessing Officer failed to provide an opportunity of personal hearing to the petitioner at the time of revising the assessment would show that such order of revising the assessment itself, is in violation of principles of natural justice and therefore, the authority ought to have corrected such error, by considering the documents filed during the hearing of the petitions filed under Section 84 of the TNVAT Act, 2006.

6. On the other hand, the learned Additional Government Pleader contended that the petitioner was given personal hearing by the Assessing Officer while disposing the petitions filed under Section 84 of the TNVAT Act, 2006 and therefore, the petitioner is not entitled to contend as if natural justice is violated. He further submitted that the petition filed under Section 84 of the TNVAT Act, 2006, is maintainable only when there is an error apparent on the face of the record. Therefore, he submitted that the petitioner is not entitled to produce the documents at the time of hearing the petitions filed under Section 84 of the TNVAT Act, 2006, which consideration is beyond the scope of Section 84 of the TNVAT Act, 2006.

7. Heard both sides.

8. There is no dispute to the fact that the orders of revising the assessment were passed without affording an opportunity of personal hearing to the petitioner. It is also not in dispute that such orders, apart from levying tax, has also imposed penalty on the petitioner. This Court has repeatedly held that providing such an opportunity of personal hearing is mandatory, especially, when the Assessing Officer chooses to impose penalty. In fact, a circular issued by the Principal Secretary/Commissioner of Commercial Taxes, Chennai-5, in Circular No.7 of 2014, makes it clear that providing such opportunity of personal hearing is mandatory, not withstanding the fact whether such opportunity was sought for by the Assessee or not. Therefore, the very revision of assessment orders passed in this case on 31.05.2018 without affording an opportunity of personal hearing to the petitioner, cannot be sustained on the ground of violation of principles of natural justice. However, as the petitioner instead of challenging those assessment orders before this Court, has gone before the Assessing Officer by way of filing the petitions under Section 84 of the TNVAT Act, 2006. In all fairness, the Assessing Officer should have considered the documents filed at the time of personal hearing and passed a detailed order on merits and in accordance with law, as the Assessing Officer has failed to provide the personal hearing during the assessment proceedings. Needless to state that such failure is an error apparent on the face of the record. Thus, this Court is satisfied that the petitions filed under Section 84 of the TNVAT Act, 2006, is maintainable and consequently, the Assessing Officer is bound to consider the documents filed along with the petitions filed under Section 84 or at the time of personal hearing, while considering such petitions.

9. Therefore, without expressing any view on the merits of assessment and the contentions raised by the petitioner, these Writ Petitions are allowed and the impugned orders are set

aside. Consequently, the matter is remitted back to the Assessing Officer to consider the petitions filed under Section 84 of the TNVAT Act, 2006, once again on merits and pass orders in accordance with law, after considering the documents filed by the petitioner in support of their contention. Such exercise shall be done by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mk

To

The State Tax Officer,
Thirumudivakkam Assessment Circle,
32 & 33, Sripuram 2nd Street,
Thiruneermalai Main Road,
Chennai-44

+1 CC to Mr.R.Kumar, Advocate sr 82562.
+1 CC to Spl. Govt. Pleader(T) sr 83211.

W.P.Nos.31906 & 31909 of 2018

VSNII(CO)
SP(19/12/2018)