IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.31921, 31924, 31926, 31928 & 31932 of 2018
and
W.M.P.Nos.37155, 37158, 37161, 37162 & 37165 of 2018

Tvl. Sri Venkateswara Stores
Represented by its Proprietor
No.1, Old Mahabalipuram Road,
Thiruporur.

...Petitioner
(in all W.Ps)

vs.

1. The Assistant Commissioner (CT)
Thirukazhukundram Assessment Circle (FAC)
No.42, Wahab Nagar, Thirukazhukundram-603 109.

2. The Commercial Tax Officer (CT)
Group II, Enforcement (South)
Greams Road, Chennai-600 006.

...Respondents
(in all W.Ps)

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 33541601895/2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017 respectively dated 28.09.2018 and quash the same as illegal, unconstitutional for having been passed in violation of principles of natural justice and further direct the 1st respondent to pass fresh orders in accordance with law after granting an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.R.Ganesh Kanna
(in all W.Ps)

For Respondents : Mr.M.Hariharan
Additional Government Pleader
(in all W.Ps)

COMMON ORDER

The petitioner is aggrieved against the orders of assessment dated 28.09.2018 passed in respect of assessment years 2012-2013 to 2016-2017.

2. Heard both sides.

3. The grievance of the petitioner before this Court is that before passing the impugned orders, the petitioner was not put on notice. Apart from raising such ground, it is also stated that the issues dealt with by the Assessing Officer viz., mis-match and purchase made from registration cancelled dealers are all covered by the decision of this Court and therefore, the Assessing Officer ought to have followed such decision and made the assessment.

4. On the other hand, it is the case of the Revenue that the notice of proposal dated 05.04.2018 was served on the petitioner on 17.05.2018 and therefore, the petitioner is not correct in contending otherwise.

5. Even though, it is contended by the petitioner that they have not received the notice of proposal, perusal of the facts and circumstances made in the notice, acknowledging the receipt of the same on 17.05.2018 would show that the notice was served on the petitioner. Therefore, the petitioner ought to have filed their reply within the time stipulated. The Assessing Officer has chosen to pass the orders of assessment only on the reason that the petitioner failed to furnish any reply.

6. Considering the fact that the issues involved in the orders of assessment viz., mis-match and purchase made from registration cancelled dealers are already dealt with by this Court, this Court is of the view that the Assessing Officer can re-do the assessment after following the directions/procedures issued in respect of mis-match issue reported in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343) and also considering the case of the petitioner in respect of other issue viz., purchase made from registration cancelled dealers, if such registration was made with retrospective effect. However, such indulgence can be shown to the petitioner only by putting them on some terms, since the petitioner even received the notice, has failed to make any reply.

7. Accordingly, all these writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment under the following terms and conditions:

(a) The petitioner shall file their reply along with payment of 15% of the tax liability for each assessment year within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such reply along with 15% of the tax liability as stated supra, the Assessing Officer shall indicate the date of personal hearing and communicate the same to the petitioner.

(c) On completion of such personal hearing, the Assessing Officer shall pass fresh orders of assessment on merits and in accordance with law, by following the directions/guidelines issued by this Court reported in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343) in respect of mis-match issue and by following the order passed by this Court in WP.No.6993 of 2017 dated 12.03.2017, wherein, the issue of purchase made from registration cancelled dealers, if such registration was made with retrospective effect was dealt with. Such exercise shall be done by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner (CT)
Thirukazhukundram Assessment Circle (FAC)
No.42, Wahab Nagar, Thirukazhukundram-603 109.

2. The Commercial Tax Officer (CT)
Group II, Enforcement (South)
Greams Road, Chennai-600 006

+1cc to Mr.R.Ganesh Kanna, Advocate, S.R.No.85724

+1cc to the Spl Government Pleader, S.R.No.86390

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KJI(CO)
GSP(04/01/2019)