IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

Writ Petition No.32113 of 2018
and
W.M.P.No.37380 of 2018

M/s.Sri Manivel Tex,
Rep. by its Partner,
No.33-35, LKR Nagar,
Vellakovil,
Tiruppur District - 638 111. .. Petitioner

Vs.

State Tax Officer,
Kangeyam Assessment Circle,
Kangeyam,
Tiruppur District. .. Respondent

Writ petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in TIN 33383084919/2013-14 dated 23.04.2018 and to quash this assessment proceedings of the respondent and to direct the respondent to pass fresh orders after giving an opportunity of personal hearing as required under Section 22(4) of TNVAT Act.

For Petitioner: Mr.C.Baktha Siromoni

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (T)

O R D E R

The petitioner is aggrieved against the order of assessment dated 23.04.2018 passed in respect of assessment year 2013-14.

2. Heard, Mr.C.Baktha Siromoni, learned counsel appearing for the petitioner and Mrs.G.Dhana Madhvi, learned Government Advocate (T) appearing for the respondent.

3. The main grievance of the petitioner before this Court is that the impugned order of assessment was passed without affording sufficient opportunity to the petitioner to file their

objection and also without giving personal hearing. Therefore, it is contended that the impugned order suffers on the ground of violation of the principles of natural justice.

4. The case of the petitioner is that they sent a letter dated 08.03.2018 in response to the notice of proposal dated 28.02.2018 seeking 15 days time to file the reply and that the Assessing Officer has not intimated as to whether such request was considered or not. Therefore, it is contended that the petitioner was not in a position to file the reply in the absence of any communication from the Assessing Officer based on the request for adjournment.

5. On the other hand, the learned Government Advocate submitted that though the petitioner sought for 15 days time to file the reply, has however, not filed such reply within such time and therefore, the Assessing Officer is left with no other option except to pass the order of assessment. However, she fairly submitted that no opportunity of personal hearing was given to the petitioner.

6. It is seen that a notice of proposal was issued to the petitioner and in response to the said notice, the petitioner made a request for granting further time of 15 days to file the reply, through their letter dated 08.03.2018. The said fact is admitted by the Assessing Officer as could be seen in the order of assessment itself. Further, as rightly contended by the petitioner, the Assessing Officer has not informed the petitioner as to whether such request for extension of time has been considered or rejected. Therefore, there is every justification on the part of the petitioner in not filing the reply as they could have been under the reasonable impression that their request dated 08.03.2018 will be considered and intimated in writing. In any event, as it is an admitted fact that petitioner was not given an opportunity of personal hearing, more particularly, when the Assessing Officer has chosen to impose penalty payable under Section 22(5) of Tamil Nadu Value Added Tax Act, 2006, this Court is of the view that one more opportunity shall be given to the petitioner to putforth their case before the Assessing Officer so as to enable the Assessing Officer to pass the order of assessment afresh on merits and in accordance with law, after giving due opportunity of hearing to the petitioner as well.

7. Accordingly, without expressing any view on the merits of the matter, this Writ Petition is allowed and impugned order is set aside and the matter is remitted back to the Assessing Officer to redo the assessment and pass appropriate order after giving due opportunity of hearing to petitioner and also by considering the objections to be filed by the petitioner. The

petitioner is given two weeks time, from the date of receipt of copy of this order, to file such objections. On receipt of such objections, the Assessing Officer shall intimate the date of personal hearing to the petitioner and on completion of such personal hearing, the order of assessment shall be passed on merits in accordance with law within a period of six weeks therefrom. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsi/vsi

To

The State Tax Officer,
Kangeyam Assessment Circle,
Kangeyam,Tiruppur District.

+1cc to the Special Government Pleader(Taxes) Sr.88002

W.P.No.32113 of 2018

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srg 23/01/2019