IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.12.2018

CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.32857, 32860, 32863, 32876 & 32879 of 2018
and
W.M.P.Nos.38065, 38066, 38068, 38069, 38083, 38084, 38088, 38089, 38093 & 38094 of 2018

M/s.R.S.Enterprises,
Rep. by its Proprietor - M.Kannan,
Door No.7, Cauvery View Complex,
Pattamangala Street,
Myiladuthurai - 609 001,
Nagapattinam District. ...Petitioner in all W.Ps

Vs

The Commercial Tax Officer(FAC),
Myiladuthurai-I Circle,
Myiladuthurai,
Nagapattinam District. ...Respondent in all W.Ps

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN:33504042340/ 2011-2012 dated 25.10.2018, TIN:33504042340/2012-2013, TIN:33504042340/2013-2014, TIN:33504042340/ 2015-2016, TIN:33504042340/2016-17 dated 26.10.2018 quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar
(in all W.Ps)
For Respondent : Mr.M.Hariharan
Additional Government Pleader
(in all W.Ps)

C O M M O N O R D E R

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

2. The petitioner is aggrieved against the orders of assessment dated 25.10.2018 & 26.10.2018 passed in respect of assessment years 2011-2012, 2012-2013, 2013-2014, 2015-2016 and 2016-2017.

3. The main ground of challenge in these writ petitions is that the Assessing Officer has chosen to pass the impugned orders solely guided by the report submitted by the Enforcement Wing Officials, without considering any of the objections raised by the petitioner to the notices of proposal. Thus, it is contended that the failure to consider the objections resulted in violation of principles of natural justice. It is further contended that the Assessing Officer also failed to give an opportunity of personal hearing to the petitioner, having chosen to impose penalty as well. Thus, it is stated that on that ground also, the impugned orders cannot be sustained.

4. The learned counsel for the petitioner after inviting this Court's attention to the impugned orders submitted that the Assessing Officer has not considered the objections and simply confirmed the proposal based on an inspection report. In support of his contention, the learned counsel relied on a decision of this Court reported in [2006] 146 STC 642 (Mad) in the case of Madras Granites Vs. Commercial Tax Officer, Arisipalayam Circle, Salem.

5. On the other hand, the learned Additional Government Pleader for the respondent submitted that the petitioner has admitted their liability before the Inspecting Officials and paid certain amount of tax and therefore, the Assessing Officer, by taking note of such admission, has passed the impugned orders of assessment. Even though he contended so, he is not disputing the fact that the Assessing Officer has not discussed any of the objections raised by the petitioner made in response to the notice of proposal and that no personal opportunity was given to the petitioner, before concluding the assessment.

6. Heard both sides.

7. It is seen the the notices of proposal were sent to the assessee and in response to the notices, the assessee has filed a detailed reply opposing the proposal. The Assessing Officer in fact extracted the entire objections raised by the petitioner in the impugned orders. However, he has not chosen to give his finding as to how those objections are not sustainable. On the other hand, he has concluded the assessment only on the reason that the assessee has duly admitted the alleged purchase omission and agreed to pay the tax at the time of inspection. Therefore, the Assessing Officer has brushed aside the objections as an after thought. Needless to state that the

Assessing Officer, being a quasi judicial authority has to exercise his power, with independent application of mind on the facts and circumstances, uninfluenced by any of the instructions or directions issued by the higher authorities or the report made by the Inspecting Officials. No doubt, such report of the Inspecting Officials may be the material in support of the proposal, but that itself, cannot be a conclusive proof for confirming the proposal, especially, when the petitioner, through their reply to the notice of proposal, has chosen to deny their liability.

8. In the case reported in [2006] 146 STC 642 (Mad), the Division Bench of this Court has observed as follows:

> "It is well settled that the assessing officer is a quasi judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments. We hold that the assessments are not sustainable in law. Accordingly, the orders of assessment in both the matters are liable to be quashed and consequently, the orders of the Special Tribunal confirming the orders of assessment are also liable to be quashed."

9. In the case reported in [2015] 81 VST 560 (Mad), the learned Judge of this Court, after following the above said decision of this Court, has found that the Assessing Officer therein has been solely guided by the proposal given by the inspecting officer, thereby, showing no independent application of mind and that the duties enshrined on the Assessing Officer under the provisions of the Act have been given a go-by.

10. Further in this case, admittedly, the Assessing Officer has not chosen to give an opportunity of personal hearing. At this juncture, it is useful to refer a circular issued by the Principal Secretary/Commissioner of Commercial Taxes, Chennai-5, in Circular No.7 of 2014, wherein, it is stated 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, it is bounden duty of the Assessing Officer to give such opportunity of personal hearing, more particularly, when he is proposing to impose penalty on the assessee. As such opportunity is not given to the petitioner in this case, the impugned orders are liable to be set aside, on this ground as well.

11. 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 redo the assessment, by considering the objections raised by the petitioner and also by providing an opportunity of personal hearing to them. Thereafter, the Assessing Officer shall pass fresh orders on merits and in accordance with law, as this Court is not expressing any view on the merits of the matter. Such exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mk

To

The Commercial Tax Officer(FAC),
Myiladuthurai-I Circle,
Myiladuthurai,
Nagapattinam District.

+5ccs to Mr.R.Hemalatha, Advocate, S.R.Nos.87146 to 87150
+1cc to The Special Government Pleader, S.R.No.87104

W.P.Nos. 32857, 32860, 32863,
32876 & 32879 of 2018

GS-II(CO)

rrs 08/01/2019