IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.32961, 32965, 32971 & 32969 of 2018
and
WMP.Nos.38221, 38220, 38218, 38217, 38233, 38230, 38227 & 38225 of 2018

M/s.Touchline Technologies Private Limited
Rep. by its Director K.C.Ramesh
No.15, Baghirathi Ammal Street,
T.Nagar, Chennai-600 017.

... Petitioner
(in all WPs)

vs.

The State Tax Officer
Pondy Bazzar Assessment Circle
No.46, Pasumpon Muthuramalingam Salai,
Chennai-600 028.

..Respondent
(in all WPs)

Writ petitions 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 TIN:33371522788/2012-2013 dated 20.09.2018, TIN:33371522788/2013-2014 dated 12.10.2018, TIN:33371522788/2015-2016 dated 12.10.2018 and TIN:33371522788/2014-2015 dated 12.10.2018 respectively and quash the same insofar as it related to the levy of Tamil Nadu Value Added Tax on the differential turnover between the balance sheet and form WW filed relating to "service tax paid @ 12.36% on service income, on development of software and sales turnover of branch office in the State of Kerala"..

For Petitioner : Mr.V.Sundareswaran (in all WPs)

For Respondent : Mr.M.Hariharan Additional Government Pleader (in all Wps)

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 20.09.2018 & 12.10.2018 passed in respect of the assessment years 2012-2013 to 2015-2016, only in respect of two issues decided by the Assessing Officer viz., levy of Tamil Nadu Value Added Tax on the differential turnover between the balance sheet and form WW filed relating to "service tax paid @ 12.36% on service income, on development of software and sales turnover of branch office in the State of Kerala". In other words, the petitioner is not having any grievance against the orders of assessment passed in respect of other issues.

3. The learned counsel for the petitioner, in fact submitted before this Court that the petitioner is not questioning the tax liability arrived by the Assessing Officer in respect of other issues.

4. Insofar as the above two issues decided by the Assessing Officer is concerned, the grievance of the petitioner is that the order of assessment came to be passed for each assessment year without considering the documents filed along with the reply and without affording an opportunity of personal hearing to the petitioner, even though such opportunity was specifically sought for. The learned counsel for the petitioner invited this Court's attention to the copy of the letter delivery book filed in the typed set of papers to contend that the petitioner has filed their reply with supportive documents on 14.05.2018 and the same was acknowledged at the office of the Assessing Officer on the same day and therefore, the Assessing Officer is not right in stating that the petitioner did not file any supportive documents. Like wise, the learned counsel has drawn this Court's attention to the reply submitted by the petitioner on 14.05.2018, wherein, a specific request for personal hearing was sought for. Therefore, the learned counsel contended that the Assessing Officer is not justified in concluding the assessment, without giving an opportunity of personal hearing to the petitioner, apart from the fact that he has also not considered the documents already filed along with the reply.

5. On the other hand, the learned Additional Government Pleader for the respondent contended that in the very notice of proposal issued on 26.03.2018, it was clearly indicated that the petitioner may appear before the Assessing Officer on any working day within 15 days of receipt of the said notice and therefore, it is evident that the opportunity of personal hearing was given to the petitioner. However, insofar as the other contention relating to filing of the documentary evidence along with the reply is concerned, the learned Additional

Government Pleader is not in a position to justify the impugned orders as to how the Assessing Officer has come to the conclusion that no such documents were filed.

6. Heard both sides.

7. It is seen that while filing the objections to the notice of proposal, the petitioner has filed the documents, as is evident from the acknowledgment dated 14.05.2018 sent in the letter delivery book. When such being the factual position, this Court is not in a position to know as to how the Assessing Officer has come to the conclusion that the petitioner has not filed any supportive documents. Whether the documents filed by the petitioner are supporting the case of the petitioner or not, is another question, which has to be considered and decided only by dealing with those documents. On the other hand, the finding given by the Assessing Officer in this case is that no such documents were filed, which, in the considered view of this Court, is factually incorrect.

8. While coming to the next question relating to the personal hearing, this Court has already found in very many cases that the indication of personal hearing in the notice of proposal itself, on any working day within 15 days of the receipt of the notice, cannot be considered as grant of personal hearing, since such indication is not to be construed as an opportunity for grant of an effective personal hearing, as such personal hearing should take place after only filing of the reply by the petitioner, so that both the petitioner as well as the Assessing Officer will be in a position to discuss as to whether the proposal and the consequential reply are justifiable or not. Therefore, it is for the Assessing Officer to indicate a specific date of personal hearing after getting the reply from the petitioner. In this case, it has not been done. Therefore, on both the grounds as discussed supra, this Court is inclined to remit the matter in respect of two issues referred to in these writ petitions alone.

9. Accordingly, these writ petitions are allowed and the impugned orders of assessment are set aside only insofar as those two issues viz., levy of Tamil Nadu Value Added Tax on the differential turnover between the balance sheet and form WW filed relating to "service tax paid @ 12.36% on service income, on development of software and sales turnover of branch office in the State of Kerala" are concerned. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment, after considering the documents already filed by the petitioner and also by providing an opportunity of personal hearing to the petitioner. 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. In respect of other issues, the assessment orders stand. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mk

To

The State Tax Officer
Pondy Bazzar Assessment Circle
No.46, Pasumpon Muthuramalingam Salai,
Chennai-600 028.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.85322

+1cc to the Spl Government Pleader, S.R.No.86392

WP.No.32961, 32965,
32971 & 32969 of 2018

KS(CO)
GSP(07/01/2019)