IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.33169, 33171, 33174, 33176 & 33178 of 2018
and
W.M.P.Nos.38488, 38492, 38493, 38496 & 38499 of 2018

M/s.Bliss Shoes.
Represented by its Partner
Mr.K.Mohammed Noorullah, Age 47, Male,
SF No.159-V.SF.No.160/3,
Thutipet, Ambur - 635 811.
Vellore District. ...Petitioner in all W.Ps

Vs

1. The Commercial Tax Officer(Main)
Gudiyatham (West) Assessment Circle,
Gudiyatham.

2. The Commercial Tax Officer (Enforcement)
Central Enforcement Wing,
Vellore.

3. The State Tax Officer,
Gudiyatham (West) Assessment Circle,
Gudiyatham. ...Respondents in all W.Ps

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the impugned proceedings of the first respondent in TIN:33564342619/2010-2011, TIN:33564342619/2011-2012, TIN:33564342619/2012-2013, TIN:33564342619/2013-2014, TIN:33564342619/2014-2015 and quash the impugned order dated 28.02.2017 as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act,2006 and against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar
(in all W.Ps)

For Respondents: 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 respondents. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the orders of assessment dated 28.02.2017 passed in respect of assessment years 2010-2011 to 2014-2015.

3. The main grievance of the petitioner is that the Assessing Officer has not followed the principles of natural justice, while passing the impugned orders. It is their further contention that the Assessing Officer, mechanically proceeded to pass the impugned orders, without even following the basic requirement of issuing a valid notice of proposal and affording an opportunity of personal hearing to the petitioner. It is contended that the notice of proposal issued on 14.01.2017 for all the assessment years did not call upon the petitioner to furnish their objections at all, by giving any time limit as well, for doing so.

4. The learned counsel appearing for the petitioner after inviting this Court's attention to the notice of proposal dated 14.01.2017 and the orders of assessment dated 28.02.2017 submitted that both are verbatim except the dates, which itself would indicate the non-application mind of the Assessing Officer. He further pointed out that the notices of proposal did not call upon the petitioner to give their objections. He also submitted that though the said notices were dated on 14.01.2017, the same were posted on 17.02.2017 and received by the petitioner on 18.02.2017. However, the Assessing Officer passed the impugned orders within 10 days, without even waiting for the petitioner to file their reply, even though such opportunity is not given in the notice.

5. The learned Additional Government Pleader appearing for the respondents, on perusal of the notices of proposal, has fairly conceded that the same did not call upon the petitioner to give their reply. Therefore, the learned Additional Government Pleader submitted that the matter may be remitted back to the Assessing Officer to redo the assessment from the stage of issuing the notice of proposal.

6. Heard both sides.

7. As rightly pointed out by the learned counsel for the petitioner, the notices of proposal dated 14.01.2017 have not called upon the petitioner to give any reply at all. On the other hand, it stopped with the proposal.

8. Needless to say that if the Assessing Officer intends to make some proposal, he is duty bound to call upon the assessee to give their reply/objection, by fixing a time limit for doing so. If no such opportunity is given, then such proposal cannot stand in the eye of law, as a valid proposal. In this case, admittedly, no such opportunity is given to the petitioner. Therefore, the petitioner is reasonably prevented from making any reply much less an effective one before the Assessing Officer. It is also possible to conclude that the petitioner cannot be faulted, if they understood the proposal as if the order itself, in the absence of any opportunity for them to give their reply. Further, it is seen that the Assessing Officer has also imposed penalty on the petitioner, without giving any opportunity of personal hearing.

9. Considering the above stated facts and circumstances, this Court is of the view that the very notice of proposal issued on 14.01.2017 in respect of all assessment years is unsustainable, as the same did not give any opportunity to the petitioner to file their objections. Therefore, the consequential assessment orders also cannot be sustained, apart from the fact that the Assessing Officer failed to afford an opportunity of personal hearing also.

10. Thus, these writ petitions are allowed and the impugned orders of assessment dated 28.02.2017 as well as the notices of proposal dated 14.01.2017 are set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment from the stage of issuing the notice of proposal. Needless to say that after issuing such notice of proposal, the Assessing Officer shall consider the objections to be raised by the petitioner and also give personal hearing to them before passing the orders of assessment. The whole 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, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

sni/mk
To

1. The Commercial Tax Officer(Main)
   Gudiyatham (West) Assessment Circle,
   Gudiyatham.

2. The Commercial Tax Officer (Enforcement)
Central Enforcement Wing,
Vellore.

3. The State Tax Officer,
Gudiyatham (West) Assessment Circle,
Gudiyatham.

+1 CC to The Spl. Govt. Pleader(T) sr 87102.
+1 CC to Mr.P.Rajkumar, Advocate sr 86119.

W.P.Nos.33169, 33171, 33174,
33176 & 33178 of 2018

SSD(CO)
SP(08/01/2019)