IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.33377, 33380 & 33382 of 2018
and
W.M.P.Nos.38751, 38754 & 38755 of 2018

M/s.Vaduvambikai Enterprises,
Represented by its Managing Partner,
Mr.T.Logeswaran, Age 38, Male,
Door No.32, V.Block,
Anna Nagar, Chennai - 600 040.
...Petitioner in all W.Ps

Vs

1. The State Tax Officer,
Perambur Assessment Circle,
15 & 16, Malligai Avenue,
100 Feet Road, Kolathur,
Chennai - 600 099.

2. The Deputy Commissioner (CT)
Enforcement (Central),
PAPJM Building,
Greams Road, Chennai - 600 006.

3. The Commercial Tax Officer,
Group-I, Enforcement (Central)
PAPJM Building,
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 to call for the impugned proceedings of the first respondent in TIN:33451040654/2007-2008, TIN:33451040654/2008-2009, TIN:33451040654/2009-2010 and quash the impugned order dated 31.10.2018 as passed contrary to the principles of natural justice and further direct the first respondent to consider the documents filed along with the letter dated 02.03.2017 and the objections dated 20.10.2018 filed by the petitioner in an independent manner not being influenced by the proposals contained in VSI-3/180/2014-2015 Group-I, Enforcement, Central dated 24.04.2015 of the second and third respondents and pass a fresh assessment order in accordance with law.

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

For Respondents: Mrs.G.Dhana Madhri
Government Advocate (Tax)
(in all W.Ps)

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate (Tax) 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 31.10.2018 passed in respect of assessment years 2007-2008, 2008-2009 and 2009-2010.

3. The main grievance of the petitioner before this Court is that the Assessing Officer has chosen to pass the impugned orders of assessment, as if the petitioner failed to produce the documents as ordered by this Court in the earlier round of litigation in W.P.Nos.35360 to 35362 of 2016 dated 23.11.2016, when infact the petitioner produced the documents viz., profit and loss accounts, auditors balance sheet, details of work order, contract receipt and material purchase, labour and other charges on 02.03.2017 along with a covering letter, which were also duly acknowledged by the then Assessing Officer on the very same day. Therefore, it is contended that the impugned orders passed by the present Assessing Officer, who was not the recipient of those documents on 02.03.2017, cannot be sustained, since the assessment was proceeded on the wrong presumption as if the petitioner did not furnish those documents.

4. The learned counsel for the petitioner invited this Court's attention to the order passed in W.P.Nos. 35360 to 35362 of 2016 dated 23.11.2016, the letter dated 02.03.2017 and the letter delivery book dated 02.03.2017, to substantiate the contention of the petitioner that those documents were produced on 02.03.2017 itself.

5. The learned Government Advocate appearing for the respondents, based on instructions, submitted that though such letter dated 02.03.2017 is available in the record, the documents enclosed along with the said letter are not available in the file.

6. Heard both sides.

7. It is seen that the petitioner had earlier approached this Court, challenging the orders of assessment passed in respect of the very same assessment years dated 01.09.2016 in W.P.Nos. 35360 to 35362 of 2016 dated 23.11.2016. It is further seen that those writ petitions were allowed and the impugned orders were set aside, by remitting the matter back to the Assessing Officer with further direction to the petitioner to produce the documents and consequently, with a direction to the Assessing Officer to redo the assessment after thoroughly considering the petitioner's objection. It is seen that in pursuant to the said order, the petitioner through their communication dated 02.03.2017 furnished those documents before the Assessing Officer, as is evident from the acknowledgement made in the letter delivery book dated 02.03.2017. While such being the fact, the Assessing Officer passed the impugned orders, by observing that the petitioner has not filed the documents as directed by this Court and that in the absence of the documentary evidence, the turn over as proposed by the enforcement wing authority is assessed.

8. Perusal of the impugned orders of assessment would show that absolutely there is no reference about the letter of the petitioner dated 02.03.2017, while it is admitted before this Court by the learned Government Advocate that such letter is available in the record. Therefore, it is evident that the Assessing Officer has not looked into the said communication sent by the petitioner along with enclosures before passing the orders of assessment. Thus, it is evident that the Assessing Officer has wrongly presumed as if the petitioner has not filed the documents. At any event, as the learned Government Advocate submitted that those documents are not available in the file, the learned counsel for the petitioner readily agreed to furnish one more set of documents before the Assessing Officer so as to enable him to redo the assessment.

9. Considering the above stated facts and circumstances and considering the fact that the impugned orders of assessment are passed without considering the documents already filed by the

petitioner, this Court is of the view that these impugned orders, cannot be sustained and consequently, the Assessing Officer has to redo the assessment once again.

10. Accordingly, these Writ Petitions are allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer for redoing the assessment under the following terms and conditions:

> a) The petitioner shall furnish one more set of documents already filed before the Assessing Officer within a period of two weeks from the date of receipt of a copy of this order.
>
> b) On receipt of such documents, the Assessing Officer shall give an opportunity of personal hearing, by specifically indicating the date of such hearing.
>
> c) On completion of such personal hearing, the Assessing Officer shall pass fresh orders of assessment on merits and in accordance with law within a period of six weeks thereafter, as this Court is not expressing any view on the merits of the assessment in these writ petitions.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sni/mk
To

1. The State Tax Officer,
   Perambur Assessment Circle,
   15 & 16, Malligai Avenue,
   100 Feet Road, Kolathur,
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2. The Deputy Commissioner (CT)
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Group-I, Enforcement (Central)
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+1cc to the Special Government Pleader Sr.87501
+1cc to M/S.P.Raj Kumar, Advocate Sr.86634

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& 33382 of 2018

skv[co]
srg 11/01/2019