IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.33747 & 33750 of 2018
and
W.M.P.Nos.39178 & 39183 of 2018

M/s. Sree Sai Ram Builders,
Represented by its Partner,
Mrs.S.Tamilarasi,
Sri Kowshikam, Ground Floor,
No.19/7, Meenakshi Street,
Perambur, Chennai - 600 011 ...Petitioner
(in both W.Ps)

Vs

1. The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Commercial Taxes & Registration,
Ft.St.George, Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
Commercial Taxes Department,
Ezhilagam, Chepauk, Chennai - 600 005.

3. The Commercial Tax Officer,
Sembium Assessment Circle,
Chennai - 600 099. ...Respondents
(in both W.Ps)

Prayer:Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the third respondent in his TIN No.33721045404/2012-2013 and TIN No.33721045404/2013-2014 dated 17.09.2018 and to quash the same and to direct the respondents to pass the order after affording an opportunity of personal hearing and to pass fresh order of assessment for the assessment years 2012-2013 & 2013-2014 respectively.

For Petitioner : Mr.M.MD Ibrahim Ali
(in both W.Ps)
For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)
(in both 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 17.09.2018 passed in respect of assessment years 2012-2013 & 2013-2014.

3. The main grievance of the petitioner is that the Assessing Officer has mechanically rejected the objections filed by the petitioner, without having any discussion on the same. Therefore, it is contended that the impugned orders are an outcome of non-application of mind. It is the further grievance of the petitioner that no personal hearing was given to the petitioner even though the Assessing Officer has also imposed penalty under Section 27(3)(C) of the Tamil Nadu Value Added Tax Act, 2006.

4. Heard both sides.

5. It is seen that the notices of proposal dated 29.07.2016 were issued to the petitioner. It is further seen that the petitioner sent a detailed reply/objections on 17.08.2016. The Assessing Officer has admitted that the petitioner sent such reply and in fact, she has chosen to extract the entire reply of the petitioner in the assessment order, which itself runs to five pages. However, the Assessing Officer has simply rejected the objections as not valid, without discussing anything on merits of the objections.

6. Needless to say that the objections filed in pursuant to the the notice of proposal should be considered and merits of those objections should be discussed in the orders of assessment. No doubt, it is for the Assessing Officer to either accept the objections or reject the same. At the same time, on both occasions, the Assessing Officer has to give his own independent reasoning and finding as to why he has chosen to accept or reject the objections. Mere rejection of the objection by a single line observation that the objections are not valid, cannot be construed as proper consideration of the objections, more particularly, when the Assessing Authority is discharging the quasi-judicial function. Extracting the objections alone

cannot be considered as though the Assessing Officer has gone into those objections and applied his mind in the absence of any finding rendered by such officer on those objections. Therefore, this Court finds that the impugned orders passed without considering the said objections, cannot be sustained.

7. Apart from the above reasons, it is also seen that the petitioner was not given an opportunity of personal hearing, more particularly, when the Assessing Officer has chosen to impose penalty. Therefore, it violates the principles of natural justice as well. On both the grounds, this Court is convinced to set aside the matter and remit the matter back to the Assessing Officer to redo the assessment. It is made clear, that this Court is not expressing any view on the merits of the objections raised by the petitioner or the proposals made by the Assessing Officer, since it has to be considered and decided only by the Assessing Officer on merits and in accordance with law.

8. Accordingly, this Writ Petition is allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment, after considering the objections filed by the petitioner and also by providing opportunity of personal hearing to the petitioner. Such 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sni/mk

To

1. The State of Tamil Nadu,
   Represented by its Secretary to Government,
   Department of Commercial Taxes & Registration,
   Ft.St.George, Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
   Commercial Taxes Department,
   Ezhilagam, Chepauk, Chennai - 600 005.

3. The Commercial Tax Officer,
   Sembium Assessment Circle,
   Chennai - 600 099.

+2 ccs to Mr.M.Mohamed Ibrahim Ali, Advocate, S.R.No.87650

+1 cc to the Spl.Government Pleader, S.R.No.88004

W.P.Nos.33747 & 33750 of 2018

SSV(CO)
SSM(29/01/2019).