IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.33613, 33616, 33620, 33622, 33623, 33625 & 33629 of 2018
and
W.M.P.Nos.39012, 39024, 39029, 39019, 39021, 39023 & 39013 of 2018

Tvl. PSR Associate
Rep. by its Partner N.Padmanabhan
Having office at SF No.589,
Vaikkal Thottam, Goundampalayam
Ganapathipalayam Post,
Tirupur- 641 605. ...Petitioner
(in all WPs)

Vs

The Assistant Commissioner (CT)
Tirupur South Circle
Tirupur. ...Respondent
(in all Wps)

Prayer in WP.33613 of 2018

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings of the respondent in TIN:33462461068/2010-2011 dated 16.08.2018 and the consequential impugned proceedings of the respondent dated 30.10.2018, quash the same and direct the respondent to consider the objections dated 13.07.2018, grant a personal hearing & then pass orders 2011-12; 2012-13; 2013-2014; 2014-2015; 2015-2016 and 2016-2017 dated 16.08.2018 quash the same and direct the respondent to consider the objections dated 13.07.2018, grant personal hearing and then pass orders in WP: 33616; 33620; 33622, 33623, 33625 and 33629/ 2018.

For Petitioner : Mr.S.Raveekumar
(in all Wps)

For Respondent : Mr.V.Haribabu
Additional Government Pleader
(in all WPs)

C O M M O N   O R D E R

Mr.V.Haribabu, learned Additional Government Pleader (Tax) 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. These writ petitions are filed challenging the orders of assessment dated 16.08.2018 and the consequential order dated 30.10.2018, in rejecting the petitions filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, in respect of assessment years 2010-2011 to 2016-2017.

3. The only grievance of the petitioner before this Court against the impugned orders is that the Assessing Officer has erroneously proceeded to pass the orders of assessment on the presumption that the petitioner did not file any objection to the notices of proposal, while in-fact the petitioner has filed their objections on 13.07.2018, which was duly acknowledged at the office of the Assessing Officer. Therefore, it is contended that passing the orders of assessment without considering the objections raised by the petitioner is in violation of principles of natural justice. It is further contended that when such fact was brought to the notice of the Assessing Officer, by way of petitions filed under Section 84 of the TNVAT Act, 2006, the same were also rejected by directing the petitioner to file an appeal.

4. The learned Additional Government Pleader for the respondent is not disputing the fact that the orders of assessment were passed by observing that the petitioner did not file any objections. At the same time, he is not disputing the contention raised by the petitioner in this writ petition that common objections dated 13.07.2018 was filed by the petitioner and however, those objections were not taken into account by the Assessing Officer, before passing the orders of assessment.

5. It is seen that the Assessing Officer issued the notice of proposal on 17.04.2018 for all the assessment years. It is further seen that the petitioner sent a reply on 13.07.2018, which is common to all the assessment years. Perusal of the said objections would show that the petitioner has touched upon each issue and made their objections with certain facts and figures. At this stage, this Court is not expressing any view on those objections as the limited issue involved in these cases is, as to whether those objections are considered by the Assessing Officer or not. It is seen from the letter delivery book maintained by the petitioner that those objections were acknowledged at the office of the respondent on 13.07.2018 itself. Therefore, it is evident that before passing the impugned orders of assessment on 16.08.2018, those objections

are already on record before the Assessing Officer. However, the Assessing Officer has chosen to pass the impugned orders of assessment only on the reason that the petitioner did not file their reply. Therefore, it is evident that such finding of the Assessing Officer is factually erroneous. Needless to say that when the objection is filed, it is for Assessing Officer to consider the same and pass orders on merits and in accordance with law. In the absence of such exercise, the impugned orders cannot be sustained in the eye of law. When such fact was brought to the Assessing Officer, by way of filing the petitions under Section 84 of the TNVAT Act, 2006, the said petitions were also rejected only by stating that the petitioner has to file a regular appeal.

6. Considering all these facts and circumstances and without expressing any view on the merits of the impugned orders, this Court is inclined to set aside the impugned orders and remit the matter back to the Assessing Officer to redo the assessment, by considering the objections already filed by the petitioner and also providing opportunity of personal hearing to the petitioner. Accordingly, all these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the mater is remitted back to the Assessing Officer to redo the assessment, by considering the objections already filed by the petitioner on 13.07.2018 and also providing an opportunity of personal hearing to the petitioner. The petitioner is directed to furnish one more copy of the objections already filed on 13.07.2018 for all the assessment years before the Assessing Officer within a period of two weeks from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall consider the objections of the petitioner and pass fresh orders of assessment on merits and in accordance with law, within a period of six weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (CT)
Tirupur South Circle
Tirupur.

+7ccs to Mr.S.Raveekumar, Advocate, S.R.No.87581 to 87587
+1cc to the Government Pleader(Taxes), S.R.No.88029

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RRS 21/01/2019