IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.33782 & 33785 of 2018
And
W.M.P.Nos.39223, 39225, 39227 & 39228 of 2018

M/s. G.P.K. & Co.,
rep. by its prop. K.S.Mathappan,
No.2/59 Block, Mariamman Koil Street,
Riverside Colony, Aliyar Nagar,
Samathur, Pollachi. ... Petitioner
(In Both W.Ps)

vs.

The Assistant Commissioner (ST),
Pollachi Rural Assessment Circle,
Pollachi, Coimbatore District.
... Respondent
(In Both W.Ps)

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying for a writ of certiorari to call for the records of the respondent in his proceedings in TIN 33662283448/ 2012-13 and 2013-14 respectively dated 23.10.2018 and quash the same as illegal.

For Petitioner in both W.Ps : Mr.S.Ramanathan

For Respondent in both W.Ps. : Mr.V.Hari Babu Additional Government Pleader (T)

COMMON ORDER

Mr.V.Hari Babu, learned Additional Government Pleader (T) takes notice for the respondent. By consent, these writ petitions are taken up for final disposal at the stage of admission itself.

2. The petitioner is aggrieved against the orders of assessment dated 23.10.2018 passed in respect of assessment years 2012-13 and 2013-14.

3.The grievance of the petitioner before this Court is that the Assessing Officer is not justified in imposing penalty, also on equal addition of tax liability, as the same is impermissible under law. He further contended that on the very same ground, this Court in another similarly situated person/assessee in W.P.No.10458 of 2018 remitted back to the Assessing Officer to redo the assessment.

4. The learned Additional Government Pleader for the respondent, on the other hand, submitted that when the notice of proposal was issued to the petitioner, they have not chosen to reply to the same and therefore, the impugned orders need not be interfered with. He further contended that in the notice of proposal itself, it was clearly indicated that the petitioner can utilise the opportunity of personal hearing in anyone of 15 days, within which, reply has to be filed to the notice of proposal.

5. The learned counsel for the petitioner submitted that the petitioner did not file the reply under the bonafide impression that there was no further obligation on their part to file any returns and pay the tax, since the PWD has made TDS of 2% towards VAT and remitted the same to the Department. However, the learned counsel submitted that the petitioner personally met the Assessing Officer and informed about his objection, which he failed to consider. He further contended that at any event, the Assessing Officer ought to have given an opportunity of personal hearing to the petitioner, when the Assessing Officer has chosen to impose penalty also.

6. Heard both sides.

7.The contention of the learned counsel for the respondent that opportunity of personal hearing was given to the petitioner in the notice of proposal itself, cannot be sustained on the simple reason that such opportunity is not an effective opportunity, since a personal hearing should take place only after filing of the reply. This issue has already been dealt with by this Court in very many cases and found that indicating the personal hearing in the very notice of proposal itself without specifying the date of hearing after the reply, is not the proper compliance of the personal hearing.

8. Admittedly, notice of proposals were issued to the petitioner before passing the impugned orders. There is no dispute to the fact that petitioner did not file any reply to the notices. But at the same time, as the

petitioner contends that penalty cannot be imposed on equal addition of the tax liability and by considering the fact that the Assessing Officer has not given an opportunity of personal hearing to the petitioner before passing the impugned orders, this Court is inclined to remit the matter back to the Assessing Officer for redoing the assessment subject to a condition that petitioner should pay 15% of the tax liability, since they have failed to file reply to the notice of proposal.

9. Accordingly, these writ petitions are allowed and the impugned orders are set aside and consequently, the matter is remitted back to the Assessing Officer for redoing the assessment under following terms and conditions:

a) The assessee shall pay 15% of the tax liability for each assessment year along with reply to the notice of proposal within a period of two weeks from the date of receipt of a copy of this order

b) On receipt of such payment and reply, the Assessing Officer shall indicate the date of personal hearing to the petitioner.

c) On completion of such personal hearing, the Assessing Officer shall pass orders on merits and in accordance with law within a period of 6 weeks thereafter.

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

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsi/vri
To

The Assistant Commissioner (ST),
Pollachi Rural Assessment Circle,
Pollachi, Coimbatore District.

+1cc to Mr.S.Ramanathan , Advocate SR.No. 88643
+1 CC TO GOVERNMENT PLEADER SR.NO. 89107

W.P.Nos.33782 & 33785 of 2018

A.SK(22/01/2019)