IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

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THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.33969,33970,33973 & 33974 of 2018
and
W.M.P.Nos.39447, 39448, 39449 & 39451 of 2018

Tvl.Shintec Engineering India Pvt.Ltd.,
represented by its Authorised Singatory,
No.156, AVN Complex, Poonamallee High Road,
Vanagaram,
Chennai - 600 095 ...Petitioner in all the W.Ps.

Vs

The Assistant Commissioner -(ST)
JJ NagarAssessment Circle,
Thirumangalam,
Chennai - 600 040. ...Respondent in all the 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 records of the respondent vide his order of assessment in TIN 33611350966/2011-12 TIN 33611350966/2012-13, TIN 33611350966/2014-15 TIN 33611350966/2015-16 dated 13.11.2018 and quash the same as illegal, unconstitutional for having been passed in violation of principles of natural justice and further direct the respondent to pass fresh order sin accordance with law after granting an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.R.Ganesh Kanna

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)

COMMON ORDER

These writ petitions are filed challenging the orders of assessment in respect of the assessment years 2011-12, 2012-13, 2014-15, & 2015-16.

2. Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondent.

3. Apart from raising other contentions on the merits of the assessment, the main grievance expressed by the petitioner before this Court is that the Assessing Officer has concluding the assessment without affording an opportunity of personal hearing. Therefore, it is contended that the principles of natural justice is violated.

4. Learned counsel for the petitioner submitted that for each assessment year, a notice of proposal was originally issued on 18.01.2016 for which the petitioner filed a detailed reply on 14.06.2016 also by making a request for grant of personal hearing. He further submitted that while such being the position, the Assessing Officer has issued the final notice on 17.10.2018, for which, the petitioner made a reply on 12.11.2018 seeking for personal hearing once again. Therefore, the learned counsel contended that passing the impugned order on the very next day i.e., 13.11.2018 without affording an opportunity of personal hearing is erroneous and in violation of principles of natural justice.

5. Learned Government Advocate, on the other hand contended that the petitioner failed to utilise the opportunity of personal hearing given to them on 29.10.2018 which was clearly indicated in the final notice dated 17.10.2018. Therefore, he contended that the petitioner is not entitled to canvass as if the Assessing Officer has violated the principles of natural justice. He also submitted that the second reply given by the petitioner on 12.11.2018 is nothing but reproducing the very same reply given by them on 14.06.2016 which has been dealt with in the second notice dated 17.10.2018.

6. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent.

7. Perusal of the impugned orders of assessment would show that the Assessing Officer has dealt with various issues and passed a detailed order touching upon the merits of those issues. It is not in dispute that as against the orders impugned in these writ petition, the petitioner is having a statutory appeal remedy before the concerned Appellate Authority. Needless to say that the factual aspects of the matter touching upon the merits of the assessment have to be considered and decided only by the next fact finding authority viz., the Appellate Authority and therefore, this Court is not inclined to go into any of such contentions. However, as the petitioner vehemently raised the issue regarding the personal hearing, this Court has to see as to whether the Assessing Officer has violated such principles of natural justice by not affording personal hearing to the petitioner.

8. Perusal of the materials placed before this court would show that after issuance of the first notice dated 18.01.2016, the petitioner has filed a detailed reply on 14.06.2016, wherein and whereby, they sought for personal hearing. While issuing the second notice styled as final notice dated 17.10.2018, the

Assessing Officer has dealt with the reply submitted by the petitioner dated 14.06.2016 and consequently, called upon the petitioner to appear for the personal hearing on 29.10.2018. Therefore, it is evident that the Assessing Officer has given the opportunity of personal hearing to the petitioner only after receipt of the objections raised from them and not before the same. Further, it is seen that the second reply submitted by the petitioner in pursuant to the final notice dated 17.10.2018 appears to be the reproduction of the very same reply made on 14.06.2016 and therefore, there is no point in saying that the petitioner should have been given an opportunity of personal hearing in pursuant to the second reply especially, when they have failed to utilise the opportunity given through the notice dated 17.102.018. Therefore, I find that the contention of the petitioner, as if the personal hearing was not given to them, is not sustainable. Since this Court finds that the impugned orders of assessment were passed after following the principles of natural justice, the merits of the assessment touching upon the issues dealt with therein have to be canvassed only before the next fact finding authority.

9. Therefore, without expressing any view on the merits of the matter, all these writ petitions are disposed of by granting liberty to the petitioner to file the statutory appeal before the concerned appellate authority by complying with all other requirements within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

vsi

To
1. The Assistant Commissioner -(ST)
JJ NagarAssessment Circle,
Thirumangalam, Chennai - 600 040.

2. The Section Officer, VR Section, High Court, Madras-104.

+4cc to Mr.A.Ravichandran, Advocate SR.No.89051

+1cc to Special Government Pleader (Taxes) SR.No.89961

W.P.Nos.33969,33970,33973
& 33974 of 2018

PP(CO)
GMY(23/01/2019)