IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.12.2018

CORAM
THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.34067 of 2018
and
W.M.P.No.39572 of 2018

Tvl.Sambavi Properties,
Represented by its partner
Mr.K.Parthasarathy,
New No.79, Old No.38,
First Floor, 7th Avenue,
Ashok Nagar, Chennai - 600 083. ...Petitioner

vs.

1. The Joint Commissioner (CT),
   Enforcement - I,
   C.T.Main Building,
   Chennai - 6.

2. The Assistant Commissioner (ST),
   Ashok Nagar Assessment Circle,
   C.T.Building 5th Floor,
   Greams Road,
   Chennai - 6. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the files of the second respondent in R.C.No. 463/2018/A4 dated 15.10.2018 and quash the same as being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr.D.Vijayakumar

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

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondents. By consent of the parties, this main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 15.10.2018 passed in respect of the assessment year 2015-2016.

3. The main grievance of the petitioner is that when the petitioner is not a registered dealer, the impugned order passed without giving sufficient opportunity to the petitioner to put forth the case, is unsustainable. It is also contended that personal hearing is also not given to the petitioner, when the Assessing Officer has chosen to impose penalty.

4. It is the case of the petitioner that the notice of proposal was served at a place, where the petitioner has already closed the business and vacated the same. Therefore, it is contended that one more opportunity may be given to the petitioner to put forth their case before the Assessing Officer.

5. The learned Government Advocate for the respondents, on the other hand, contended that the notice of proposal dated 20.09.2018 was served on one of the partner of the petitioner Firm and therefore, it cannot be stated that the principles of natural justice is violated.

6. Heard both sides.

7. Perusal of the notice of proposal dated 20.09.2018 would disclose that during the course of inspection, it was noticed by the Officials that the petitioner is an unregistered dealer and has vacated the place and their present whereabouts was not known. Even thereafter, the notice was sent to the very same address. However, it is not in dispute that one of the partner received the said notice in the said place. Therefore, atleast the said partner should have informed the petitioner firm for filing a reply to the notice. This has not been done. Now, the order of assessment is resisted by raising very many grounds on merits. This Court is not inclined to go into the merits of the matter, since the petitioner did not file any reply before the Assessing Officer.

8. Considering the fact that the assessment order was passed based on the reason that the petitioner did not file any reply and further considering the fact that the Assessing Officer imposed penalty, without affording an opportunity of personal hearing, this Court is of the view that interest of both parties will be protected, if the following order is passed in this writ petition by putting the petitioner on some terms.

9. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment under the following terms and conditions:

a) The petitioner shall file their reply along with payment of 10% tax liability within a period of three weeks from the date of receipt of a copy of this order.

b) On receipt of such reply and payment, the respondents shall inform the date of personal hearing to the petitioner.

c) On completion of such personal hearing, the Assessing Officer shall pass the order of assessment on merits and in accordance with law within a period of six weeks thereafter.
No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sni/vri

To

1. The Joint Commissioner (CT),
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   C.T.Main Building,
   Chennai - 6.

2. The Assistant Commissioner (ST),
   Ashok Nagar Assessment Circle,
   C.T.Building 5th Floor,
   Greams Road,
   Chennai - 6.

+1cc to Mr.D.Vijayakumar, Advocate,S.R.No.88905
+1cc to the Government Pleader, S.R.No.89958

W.P.No.34067 of 2018

AD(CO)

rrs 09/01/2019