IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.36, 40 & 43 of 2019
and
W.M.P.Nos.39, 40, 43, 45, 47 & 48 of 2019

M/s.Stanley Wood Works
Rep. by its Proprietor V.S.Stanly
No.29/588, Nadumalai Road,
Valparai, Coimbatore District. ...Petitioner (in all WPs)

vs.

The Deputy Commercial Tax Officer
Valparai Assessment Circle
Valparai, Coimbatore District. ... Respondent (in all WPs)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in his proceedings in CST/33532360198/2013-2014, 2015-2016 & 2016-2017 dated 23.10.2018 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan
(in all WPs)

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

C O M M O N O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate (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. The petitioner is aggrieved against the orders of assessment passed in respect of assessment years 2013-2014, 2015-2016 & 2016-2017.

3. The grievance of the petitioner before this Court as against the orders of assessment is that the same were passed in violation of principles of natural justice, since the Assessing Officer, apart from not considering the reply submitted by the petitioner to the notices of proposal, has also failed to give an opportunity of personal hearing, when he has chosen to impose penalty.

4. The learned counsel for the petitioner submitted that the notices of proposal dated 27.09.2018 were received by the petitioner on 05.10.2018 and the replies to the said notices dated 17.10.2018 were sent by registered post on 22.10.2018, since the previous two days happened to be holidays. He further contended that though the said replies were received by the Assessing Officer on 24.10.2018, the assessment orders were passed on 23.10.2018, that too, without providing an opportunity of personal hearing to the petitioner. The learned counsel further contended that in fact the assessment orders were sent to the petitioner by post only on 29.10.2018 and therefore, there is every presumption that the said orders would have been passed after the receipt of the reply.

5. On the other hand, the learned Government Advocate contended that since the petitioner failed to furnish the replies to the notices of proposal within the time stipulated, the Assessing Officer is left with no other option, except to pass the orders of assessment. However, she is not disputing the fact that the Assessing Officer did not give an opportunity of personal hearing to the petitioner.

6. Perusal of the materials placed before this Court would show that the petitioner has not slept over the matter for a long time and on the other hand, it is seen that the replies dated 17.10.2018 were sent by speed post on 22.10.2018. The said replies are said to have delivered to the Assessing Officer on 24.10.2018. But, in the meantime, the Assessing Officer immediately after expiry of 15 days, has passed the impugned orders on 23.10.2018. In any event, as the Assessing Officer has chosen to impose penalty, the petitioner should have been given an opportunity of personal hearing. The notices issued to the petitioner on 27.09.2018 has only indicated that the petitioner can appear before the Assessing Officer within 15 days from the date of receipt of the said notices. This Court has already found that such course of providing an opportunity of personal hearing is not an effective personal hearing, since such hearing should be done only after receipt of the reply. Therefore, I find that the Assessing Officer has failed to provide opportunity of personal hearing to the petitioner. On that account, the impugned orders are liable to be set aside.

7. Accordingly, without expressing any view on the merits of the matter, these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment, after considering the replies already filed by the petitioner and also after providing an opportunity of personal hearing on the date so fixed and intimated to the petitioner. The whole 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, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mk

To

The Deputy Commercial Tax Officer
Valparai Assessment Circle
Valparai, Coimbatore District.

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.684

+1cc to the Spl. Government Pleader, S.R.No.1542

W.P.Nos.36, 40 & 43 of 2019

SKV(CO)
SSM(07/01/2019)