IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.165 of 2019
and
WMP.No.172 of 2019

Tvl.Pennar Industries Ltd.,
Represented by its Deputy General Manager
Shri.N.Raja Veerabhadra Rao
No.1615, J-Block, 8th Street,
Thirumangalam,
Chennai-600 060. ... Petitioner

vs.

The State Tax Officer
Ashok Nagar Assessment Circle
Annexe Buildings 5th Floor
Greams Road, Chennai-600 006. ... Respondent

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 in the order in TIN.33501402291/2010-2011 dated 30.11.2018 and quash the same and to direct the respondent to pass fresh orders of assessment after following the directions laid down by this Honourable Court in the various case as discussed herein above.

For Petitioner : Mr.R.Ganesh Kanna

For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondent. By consent of the parties, the 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 30.11.2018 relevant to assessment year 2010-2011.

3. The grievance of the petitioner before this Court is as follows:

(a) Most of the issues considered by the Assessing Officer being mis-match issue, he ought to have followed the guidelines/directions issued in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343) and passed the assessment order accordingly. In this case, the Assessing Officer has not followed the said procedures even though the assessment order was passed much later to the order passed in JKM Graphics case.

(b) The Assessing Officer was totally influenced by the report submitted by the Enforcement Wing Officials and thus, he has chosen to pass the impugned order solely based on the said report, without applying his independent mind to the objections raised by the petitioner.

4. The learned counsel for the petitioner after reiterating the above contentions further submitted that the findings rendered by the Assessing Officer in respect of issue No.7 as though the petitioner did not file any documents is also factually incorrect, since the petitioner along with the reply has filed the documents. Therefore, the learned counsel contended that on the above reasons the impugned order is liable to be interfered with.

5. On the other hand, the learned Additional Government Pleader appearing for the respondent contended that the Assessing Officer has considered the objections and passed the impugned order. He further contended that when the Assessee has accepted the liability before the Enforcement Wing Officials, he cannot take a different stand before the Assessing Officer.

6. Heard both sides.

7. It is seen that most of issues considered by the Assessing Officer are mis-match issue and that this Court has already considered the said issue and found as to how the same has to be dealt with by the Assessing Officer, in JKM Graphics case. It is seen that the Assessing Officer has not followed the above procedures/guidelines issued in JKM Graphics case, while considering the mis-match issue. Apart from the above said fact, it is seen that the Assessing Officer has found that the petitioner has accepted the defects pointed out by the Enforcement Wing Officials and therefore, they cannot go back on their own statement. This Court has considered the above issue earlier and found that the report of the Enforcement Wing Officials cannot be a sole material before the Assessing Officer to pass the impugned assessment order and on the other hand, it

may be one of the material for doing so. In other words, the Assessing Officer being a quasi judicial authority, has to apply his independent mind to the facts and circumstances, the notice of proposal and the objections raised by the petitioner and thereafter, pass the order of assessment by giving his own independent findings and reasons. If the report of the Enforcement Wing Officials is to be considered as binding material, then there is no necessity for the Assessing Officer to issue the notice of proposal and call upon the assessee to give their reply in pursuant to such report. Therefore, it goes without saying, that despite the report filed by the Enforcement Wing Officials, the Assessing Officer is bound to give notice of proposal, as an independent authority and invite the assessee to file their objections to the proposal. Therefore, when such notice is issued and the reply is submitted, the Assessing Officer has to consider such reply, uninfluenced by the report filed by the Enforcement Wing Officials. No doubt, such report can be taken into account by the Assessing Officer as one of the material in support of his independent conclusion for passing the assessment order and not the only material. Otherwise issuing notice of proposal and receiving the reply would become an empty formality, which is not the intention of the Statute.

8. Considering the above stated facts and circumstances, this Court is of the view that, in this case, the Assessing Officer is not justified in rejecting the objections raised by the petitioner by stating that they cannot go back their own statement made before the Enforcement Wing Officials. Accordingly, I find that the matter needs to be remitted back to the Assessing Officer for redoing the assessment once again on merits and in accordance with law, also by following the procedures/guidelines issued in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343). Thus, 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 on merits and in accordance with law, also by following the procedures/guidelines issued in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343). The petitioner shall be given personal hearing before concluding the assessment. 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 petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mk

To

The State Tax Officer
Ashok Nagar Assessment Circle
Annexe Buildings 5th Floor
Greams Road, Chennai-600 006.

+1 cc to Mr.A.Ravichandran, Advocate Sr.No.980
+1 cc to The Special Government Pleader, Sr.No.1544

W.P.No.165 of 2019

SJ(CO)
CSL/29.01.2019