IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.727 of 2019
and
WMP.Nos.802 & 805 of 2019

M/s.Shrika Oil Industries
Rep. by its Partner – D.Myilsamy ...Petitioner

vs.

The Assistant Commissioner (ST)
Kangeyam
Tiruppur District. ...Respondent

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 file of the respondent in its impugned proceedings made in TIN.No.33823084483/2016-2017 dated 14.09.2018 and to quash the same as illegal.

For Petitioner: Mrs.R.Hemalatha

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 revised order of assessment dated 14.09.2018, relevant to assessment year 2016-2017. It is seen that a deemed assessment order was already made for the subject matter assessment year and however, on verification of the monthly returns, the Assessing Officer, after noticing certain defects, sought to revise the deemed assessment under Section 27(1) of the Tamil Nadu Value Added Tax Act, 2006. Accordingly, a notice of proposal was issued to the petitioner to which, they also sent a reply on 17.11.2017. In the said reply, it was informed by the petitioner that there was

a fire accident in the business premises during March 2017 and they suffered a severe loss due to the fire accident and hence, the purchases made during February 2017 were delayed and requested to allow the Input Tax Credit. On receipt of the said reply, further notice was issued by the Assessing Officer on 16.07.2018, calling upon the Assessee to reconcile the difference of turn over of exempted sales. As the petitioner did not file any reply to the said notice and also not produced any documents in support of their claim for fire accident, the Assessing Officer concluded the assessment, levied tax, reversed the ITC and also imposed penalty. The main grievance of the petitioner before this Court is that the Assessing Officer before concluding the assessment failed to afford an opportunity of personal hearing to the petitioner.

3. The learned counsel for the petitioner invited this Court's attention to the fire brigade report dated 28.09.2017 issued by the New India Assurance Company Limited, in support of her contention and submitted that there was a fire accident on 28.03.2017 on the petitioner's godown. Therefore, she contended that had an opportunity of personal hearing been given to the petitioner, they would have satisfied the Assessing Officer, by placing the above material.

4. On the other hand, the learned Additional Government Pleader for the respondent submitted that even though one more opportunity was given to the petitioner by way of notice dated 16.07.2018, they did not utilise such opportunity and filed any objections. Therefore, he contended that the Assessing Officer is left with no other option except to conclude the assessment.

5. Heard both sides.

6. There is no dispute to the fact that the petitioner was issued with original notice of proposal dated 22.09.2017 and that the petitioner has also filed their reply to the said notice on 17.11.2017. In the said reply itself, the petitioner has clearly stated that a fire accident took place in the month of March 2017. However, when the second notice was issued on 16.07.2018, the petitioner did not file any reply to the said notice. On the other hand, they urged before this Court that the Assessing Officer ought to have afforded an opportunity of personal hearing.

7. Perusal of the impugned order would show that the Assessing Officer apart from imposing tax and reversing the Input Tax Credit, also imposed penalty at the rate of 150% & 300% under Section 27(3) & 27(4) of the TNVAT Act, 2006, respectively. Needless to say that before imposing such penalty, the Assessing Officer should afford an opportunity of personal hearing notwithstanding the fact that any such

opportunity was sought for by the Assessee or not, as found in the Circular No.7 of 2014. This Court has already considered the effect of the said circular and found that providing such opportunity of personal hearing is essential for effective conclusion of the assessment proceedings. In this case, the Assessing Officer admittedly, has not given such opportunity.

8. Considering the above stated facts and circumstances, this Court, without expressing any view on the merits of the assessment, is inclined to set aside the impugned order and remit the matter back to the Assessing Officer to re-do the assessment, however, by putting the petitioner on some terms, since they have not filed their reply to the notice of proposal dated 16.07.2018.

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

(a) The petitioner shall file their reply with relevant documents to the notice dated 16.07.2018 along with 15% of tax liability within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such reply with relevant documents and payment of 15% tax liability as stated supra, the Assessing Officer shall afford an opportunity of personal hearing to the petitioner.

(c) On completion of such personal hearing, the Assessing Officer shall pass fresh orders of assessment on merits and in accordance with law, as this Court is not expressing any view on the merits of the assessment.

(d) Such exercise shall be done by the Assessing Officer within a period of six weeks thereafter.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST)
Kangeyam
Tiruppur District.

+1cc to Mr.R.Hemalatha, Advocate, S.R.No. 2637
+1cc to the Special Government Pleader(T), S.R.No.3504

WP No.727 of 2019

RV(CO)
GN(11/02/2019)