IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.1585 of 2019
and
W.M.P.No.1755 of 2019

Tvl. Kongu Nadu Cements,
Rep. by its Proprietrix,
Tmt.S.Kousalya,
Salem Main Road,
Harur. ...Petitioner

Vs

The State Tax Officer,
Harur Assessment Circle,
Harur. ...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 files of the respondent in TIN: 33083341940 of 2014-15 dated 05.12.2018 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.M.Hariharan,
Additional Government Pleader (T)

सत्यमेव जयते

O R D E R

The petitioner is aggrieved against the order of assessment dated 05.12.2018 passed in respect of assessment year 2014-15.

WEB COPY

2. The main grievance of the petitioner against the impugned order is that the same was passed without considering his objections filed to the notice of proposal.

3. It is seen that the very same petitioner approached this Court and filed a writ petition in W.P.No.26778 of 2015, challenging the assessment order dated 29.07.2015 passed in respect of the very same assessment year, on the ground that the

https://hcservices.ecourts.gov.in/hcservices/

said order was passed without affording an opportunity of personal hearing. This Court, by order dated 15.03.2016, set aside the said order dated 29.07.2015 and remanded the matter back to the Assessing Officer for fresh consideration with a specific direction to provide an opportunity of personal hearing to the petitioner and also to consider the objections filed by them on merits and in accordance with law. Thereafter, the Assessing Officer issued notice dated 14.11.2016 and called upon the petitioner to appear for personal hearing on 28.11.2016. It is seen that despite issuance of repeated notices for personal appearance, the petitioner did not appear in person. Consequently, the impugned assessment order was passed.

4. Mr.R.Senniappan, learned counsel for the petitioner contended that even though the petitioner did not appear in person, the Assessing Officer is not justified in confirming the original assessment order, which was already set aside by this Court. He further contended that the Assessing Officer also failed to consider the objections filed by the petitioner in detail on 20.07.2015. Therefore, he contended that the Assessing Officer, mechanically confirmed the original assessment order without applying his mind to the objections raised against the proposal.

5. On the other hand, the learned Additional Government Pleader contended that the petitioner is not entitled to question the impugned order, when admittedly they failed to utilize the opportunity of personal hearing, despite adjourning the matter on several occasions only for such purpose.

6. Heard both sides.

7. It is not in dispute that in respect of the very same assessment year, an earlier assessment order passed dated 29.07.2015, was set aside by this Court in W.P.No.26778 of 2015 and the matter was remitted back to the Assessing Officer for fresh consideration. This Court, specifically directed the Assessing Officer to afford an opportunity of personal hearing to the petitioner and also consider the objections filed by them on merits and in accordance with law. No doubt, the Assessing Officer, in compliance of the said order of this Court, issued a notice of personal hearing to the petitioner and that the petitioner also did not appear in person. But at the same time, perusal of the impugned order would show that the Assessing Officer has not considered the objections filed by the petitioner to the notice of proposal and on the other hand, confirmed the original assessment order, which in fact, was set aside by this Court already. May be the Assessing Officer, instead of stating that he is confirming the proposal, would have wrongly stated as if confirming the original assessment

WEB COPY

order. In any case, before confirming the proposal, the Assessing Officer ought to have considered the objections raised by the petitioner and passed the order on merits and in accordance with law, even though the petitioner did not appear in person.

8. Therefore, on the above reason, this Court is convinced to remit the matter once again back to the Assessing Officer to redo the assessment by considering the objections raised by the petitioner on merits and in accordance with law. At the same time, such indulgence can be shown to the petitioner only by putting them on some terms, since they failed to appear in person despite an opportunity was given to them to do so.

9. Accordingly, this Writ Petition is allowed and the impugned assessment order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment by considering the objections raised by the petitioner and pass fresh orders of assessment on merits and in accordance with law, subject to the condition that the petitioner pays 15% of the tax liability before the Assessing Officer within a period of two weeks from the date of receipt of a copy of this order. The Assessing Officer is directed to pass fresh assessment orders within a period four weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

gsi/vsi
To

The State Tax Officer,
Harur Assessment Circle,
Harur.

WEB COPY

+1cc to Mr.R.Senniappan, Advocate sr.8390
+1cc to the Special Government Pleader sr.9025

W.P.No.1585 of 2019

pp[co]
srg 27/02/2019

https://hcservices.ecourts.gov.in/hcservices/