IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.906, 910 & 913 of 2019
and
WMP.Nos.1016, 1021 & 1023 of 2019

M/s.K.M.S.Autos
Represented by its Proprietor
No.495/3, Bhavani Main Road,
Anthiyur, Bhavani
Erode. ...Petitioner(in all WPs)

vs.

The Assistant Commissioner (ST) (FAC)
Bhavani Assessment Circle
Bhavani. ...Respondent(in all WPs)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN:33022945340/2013-2014, 2014-2015 & 2015-2016 quash the assessment order dated 22.10.2018 made therein.

For Petitioner: Mr.P.V.Sudakar (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 main writ petitions are taken up for final disposal at the admission stage itself.

2. These writ petitions are filed challenging the orders of assessment dated 22.10.2018 relevant to assessment years 2013-2014, 2014-2015 & 2015-2016.

3. The main grievance of the petitioner before this Court is that the Assessing Officer has simply passed the orders of

assessment, based on VAT audit report without applying his independent mind to the facts and circumstances and expressing his view on the reply submitted by the petitioner on 17.09.2018. It is further contended that the Assessing Officer has not given sufficient time to the petitioner to produce the required documents even though such extension of time was sought for in the reply dated 17.09.2018 itself.

4. The learned counsel for the petitioner reiterated the above contention and submitted that the impugned orders are liable to be set aside.

5. On the other hand, the learned Government Advocate contended that the assessment orders were passed after considering the reply filed by the petitioner and therefore, the petitioner is not entitled to say that sufficient time was not granted to them, especially, when the assessment orders were passed nearly after a month from the date of the reply.

6. Heard both sides.

7. In pursuant to the notice of proposal, the petitioner made their reply on 17.09.2018, wherein they furnished certain facts and figures as against the notice of proposal. The petitioner also made a request through the said reply to submit the documents and evidence for the disputed transactions within 10 days. The Assessing Officer has recorded the receipt of the said reply on 20.09.2018. However, the fact remains that the Assessing Officer has not intimated the petitioner as to whether such request for extension of time was accepted or not. Therefore, there is a reasonable presumption on the part of the petitioner in waiting for the reply from the Assessing Officer. In any event, further perusal of the assessment orders clearly indicates that the same came to be passed on the reason that the petitioner has accepted the defect at the time of VAT audit and that they are taking a different stand during the time of assessment proceedings. Needless to state that the Assessing Officer has to consider the objections raised independently and pass the assessment orders by giving his own findings and reasonings. Therefore, the above reasons stated by the Assessing Officer without there being any independent application of mind and furnishing the reasonings for rejecting the objections cannot be sustained.

8. Hence, this Court is inclined to interfere with the impugned orders, without expressing any view on the merits of the matter, only for the purpose of remitting the same to the Assessing Officer to re-do the assessment on merits and in accordance with law.

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 re-do the assessment under the following terms and conditions:

(a) The petitioner shall file their additional reply with supportive documents within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such reply with supportive documents, the Assessing Officer shall afford an opportunity of personal hearing to the petitioner.

(c) On completion of such personal hearing, fresh orders of assessment shall be passed by the respondent on merits and in accordance with law within a period of four weeks thereafter.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST) (FAC)
Bhavani Assessment Circle
Bhavani.

+1cc to Mr. B.Raveendran, Advocate, S.R.No. 2959
+1cc to the Special Government Pleader(T), S.R.No. 3509

WP No. 906, 910 & 913 of 2019

SAI(CO)
GN(05/02/2019)