IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.1148 of 2019
and
W.M.P.No.1305 of 2019

M/s. G.K.Auto Parts,
rep. by its Proprietrix,
No.107, Lake View Road,
Chennai - 33. ...Petitioner

vs.

The Assistant Commissioner (ST)
Ashok Nagar assessment Circle,
Greames Road,
Chennai - 6. ... Respondent

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 TIN No.33531404360/2013-14 dated 04.12.2018 and quash the same as illegal, arbitrary and contrary to the principle laid down by the Honourable Court in the case of JKM Graphics Solution Pvt.Ltd., reported in 99 VST 343.

For Petitioner : Ms.C.Rekha Kumari
For Respondent : Mr.V.Haribabu,
Additional Government Pleader (T)

O R D E R

The petitioner is aggrieved against the order of assessment dated 04.12.2018 relevant to the assessment year 2013-14.

2. Mr.V.Hari Babu, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, the main writ petition itself is taken up for final disposal.

3. It is seen that a notice of proposal dated 07.10.2016 was issued on the petitioner. It is further seen that the petitioner sent a reply in detail on 22.12.2016. One of the issue dealt with by the Assessing Officer is the mismatch issue. Though the notice and the reply were of the year 2016, the impugned order came to be passed after a period of two years. The main grievance of the petitioner before this Court is that no

personal hearing was given to the petitioner before finalising the assessment, even though such opportunity was specifically sought for in their reply dated 22.12.2016.

4. A careful perusal of the impugned order would show that the Assessing Officer has chosen to pass the assessment order pursuant to a pre-revision notice dated 07.10.2016 and the reply submitted by the petitioner dated 22.12.2016, however, without providing an opportunity of personal hearing to the petitioner, especially, when he has chosen to pass the impugned order after a period of two years from the date of receipt of the reply. Perusal of the reply submitted by the petitioner dated 22.12.2016 clearly shows that they sought for personal hearing. Therefore, not providing such opportunity would only drive this Court to conclude that the impugned order violates the principles of natural justice, more particularly, when the Assessing Officer has chosen to wait for two years after receiving the reply and pass the assessment order thereafter. Under such circumstances, in all fairness, the Assessing Officer ought to have given an opportunity of personal hearing to the petitioner before concluding the assessment. Therefore, only on this ground, this Court is inclined to interfere with the impugned order and remit the matter back to the Assessing Officer to redo the assessment, after giving due opportunity of personal hearing to the petitioner.

5. Accordingly, the Writ Petition is allowed without expressing any view on the merits of the assessment and consequently, the matter is remitted back to the Assessing Officer to redo the assessment, after giving due opportunity of personal hearing to the petitioner. The Assessing Officer, while considering the mismatch issue is also bound to follow the procedure/ guidelines issued in JKM Graphics Solutions P.Ltd. v. C.T.O.(Mad) reported in 2017(99) VST 343. 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.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

vsi

To

The Assistant Commissioner (ST)
Ashok Nagar assessment Circle,
Greames Road,
Chennai - 6.

+1 CC to M/s.C. Rekhakumari, Advocate sr 3722.
+1 CC to Spl. Govt. Pleader(T) sr 4295.

W.P.No.1148 of 2019

NRI(CO)
SP(06/02/2019)