IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM :

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.1366, 1369, 1371 & 1372 of 2019
and
W.M.P.Nos.1526, 1527,1530 and1531 of 2019

Gagan Media Private Ltd.,
Rep. by its Director,
Rahamath Muthsina,
14, Periyar Road,
T.Nagar,
Chennai 600 017 ...Petitioner in all W.Ps.

Vs

The State Tax Officer,
Pondy Bazar Assessment Circle,
48, Pasumpon Muthuramalinga Devar Salai,
Chennai 600 028. ...Respondent in all W.Ps.

Common Prayer:Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for records on the file of the respondent herein in TIN 33451523229/2011-12, 2013-14, 2012-13 and 2014-15 dated 30.11.2018, quashing the same.

For Petitioners in all W.Ps. : Mr.K.A.Parthasarathy

For Respondents in all W.Ps. : Mrs.G.Dhana Madhri Government Advocate (T)

COMMON ORDER

These writ petitions are filed challenging the orders of assessment dated 30.11.2018, passed in respect of the assessment years 2011-12 to 2014-15.

2. Mrs.G.Dhana Madhri, learned Government Advocate takes notice for the respondent. By consent, these writ petitions are taken up for final disposal at the stage of admission itself.

3. The main grievance expressed by the petitioner against the impugned assessment orders is that the same were passed in a cryptic manner without discussing the merits of the objections raised by the petitioner in their reply. In other words, it is contended that the orders of assessment are non-speaking one. Apart from raising those contentions, the petitioner also questioned the impugned orders on the ground of violation of principles of natural justice, since it is stated that the petitioner was not provided an opportunity of personal hearing.

4. The learned counsel appearing for the petitioner, after inviting this Court's attention to the reply submitted by the petitioner and also the impugned orders, submitted that none of the objections raised by the petitioner were considered by the Assessing Officer. He further submitted that levying penalty cannot be done without affording an opportunity of personal hearing.

5. On the other hand, the learned Government Advocate for the respondent submitted that the Assessing Officer has extracted the objections filed by the petitioner fully in the order and thereafter, rejected the same on the reason that the petitioner has not maintained accounts correctly and completely. However, the learned Government Advocate fairly admitted that the petitioner was not afforded an opportunity of personal hearing.

6. Heard both sides and perused the materials placed before this Court.

7. It is seen that the impugned assessment orders were passed after issuing notice of proposal to the petitioner. It is also not in dispute that the petitioner objected to the proposal by giving a detailed reply. Though the Assessing Officer has chosen to extract entire reply/objection in the assessment order, unfortunately he has not chosen to discuss any of those objections as to how they are not sustainable. In other words, the Assessing Officer has not at all discussed the merits of the objection and on the other hand, by a single line observation that the assessee has not maintained accounts correctly and completely, the Assessing Officer has rejected the objection and concluded the assessment. The Assessing Officer has also imposed penalty on the petitioner under Section 27(3) of the Tamil Nadu Value Added Tax Act.

8. Needless to say that the orders of assessment passed without application of mind to the objections raised and without affording an opportunity of hearing cannot be sustained, as it only shows that the Assessing Officer has made such assessment orders with non-application of mind and in violation of the principles of natural justice. Therefore, this Court is convinced to interfere with the assessment orders and remit the matter back to the Assessing Officer for redoing the assessment, after giving due opportunity of hearing to the petitioner. Accordingly, these Writ Petitions are allowed, the impugned orders are set aside and the matter is remitted back to the Assessing Officer to redo the assessment by considering the objections raised by the petitioner on merits and in accordance with law. The Assessing Officer shall also afford an opportunity of personal hearing to the petitioner. The whole exercise shall be done by the Assessing Officer, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any view on the merits of the objections raised by the petitioner as well as the impugned orders passed by the Assessing Officer. No costs. Consequently, the connected miscellaneous petitions are closed.

gsi/vri

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

To
The State Tax Officer,
Pondy Bazar Assessment Circle,
48, Pasumpon Muthuramalinga Devar Salai,
Chennai 600 028.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.4455
+1cc to the Special Govt. Pleader (T), S.R.No.5251

W.P.Nos.1366, 1369,
1371 & 1372 of 2019

RV(CO)
KAK(22/02/2019)