IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.1614 of 2019
and
W.M.P.Nos.1787 & 1795 of 2019

M/s Topnotch Infotronix India Pvt. Ltd.,
Represented by its authorized signatory
V.Subramani,
No.6C, Valliammal Road,
Vepery, Chennai-600007. ...Petitioner

Vs.

The Assistant Commissioner (ST),
Purasawalkam Assessment Circle,
F-50, 1st Avenue, Anna Nagar East,
Chennai-600102. ...Respondent

Writ Petition 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 his proceedings in TIN 33770482049/2011-2012 dated 15.10.2018 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.V.Haribabu
Additional Government Pleader (Tax)

O R D E R

Mr.V.Haribabu, learned Additional Government Pleader (Tax) takes notice for the respondent. By consent of the parties, this main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 15.10.2018 passed in respect of assessment year 2011-2012.

3. The grievance of the petitioner as against the impugned order is as follows:

Though a notice of proposal was issued on 17.04.2014 and the petitioner filed their reply immediately on 22.05.2014, the

Assessing Officer has chosen to pass the assessment order after a period of 4½ years, that too, without providing personal hearing to the petitioner, more particularly, when such opportunity was sought for by the petitioner in their reply dated 22.05.2014 itself.

4. The learned counsel appearing for the petitioner reiterated the above contention and thus, submitted that the impugned order cannot be sustained.

5. On the other hand, the learned Additional Government Pleader contended that even though the order was passed after a period of 4 years, the Assessing Officer has considered the objections raised by the petitioner and concluded the assessment thereafter. Therefore, he submitted that the Assessing Officer has passed the order on merits. Even though he contended so, he is not disputing the fact that the petitioner was not afforded with an opportunity of personal hearing.

6. Heard both sides.

7. It is seen that the notice of proposal was issued to the petitioner as early as on 17.04.2014 and the petitioner has also sent a reply on 22.05.2014. In the said reply, the petitioner after making an elaborate objections in respect of each issue, has specifically sought for personal hearing for production of the records. Nothing happened for nearly 4½ years. All of a sudden, the impugned assessment order was passed on 15.10.2018, admittedly, without hearing the petitioner in person.

8. Perusal of the assessment order would show that the Assessing Officer has also imposed penalty on the petitioner, apart from levying tax and interest. Needless to state that the opportunity of personal hearing is to be provided to the assessee before concluding the assessment, in view of the Circular No.7/2014 dated 03.02.2014 issued by the office of the Principal Secretary/ Commissioner of Commercial Taxes, Chepauk, Chennai-6. Further, in this case, it is to be noted that the assessment order itself was passed after a period of nearly 4½ years from the date of issuance of the notice. Therefore, it is although more required to hear the petitioner in person before concluding the assessment.

9. Considering the above stated facts and circumstances, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment and pass fresh orders on merits and in accordance with law, after hearing the petitioner in person. Such 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, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sni/mk

To

The Assistant Commissioner (ST),
Purasawalkam Assessment Circle,
F-50, 1st Avenue, Anna Nagar East,
Chennai-600102.

+1cc to the Special Government Pleader Sr.5667
+1cc to Mr.S.Ramanathan, Advocate Sr.4871

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sj[co]
srg 13/02/2019