IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.09.2019

CORAM
THE HONOURNABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.1482 of 2019
and W.M.P.No.1650 of 2018

Tvl.B.T.C.Group,
represented by its Proprietor
A.Mohammed Shajahan
10/303 DEs, Mysore Road,
Gudalur - 643 212
Nilgiris District. ..Petitioner

Vs.

The State Tax Officer,
Gudalur Assessment Circle,
Gudalur. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the files of the respondent in TIN:33352582039/2-15-16 dated 24.08.2018 and quash the same as being without jurisdiction, authority of law and contrary to th principles of natural justice.

For Petitioner : Mr.M.Vadivel
for Mr.R.Senniappan

For Respondent : Mr.G.Dhana Madhri,
Government Advocate

O R D E R

The present writ petition is filed challenging the order of assessment dated 24.08.2018, relevant to the assessment year 2015-16.

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

3. Before passing the impugned order, a notice of proposal dated 07.06.2018 was issued on the petitioner,

wherein and whereby, it was informed that the petitioner did not pay tax dues during 2015-16, totally a sum of Rs.80,980/- for the month of May, June, August, September, October,November, 2015 and February, 2016 and that the petitioner has not reported the interstate purchases effected by them during the relevant period for the value of Rs.8,94,603/-. Though such notice was issued and the same was received by the petitioner, it appears that no written reply was filed by the petitioner before the Assessing Officer.

4. On the other hand, it is contended before this Court that the petitioner has personally met the Assessing Officer and apprised him all the fact that the tax due referred to in the notice was already paid in the year 2015-16 itself and that the petitioner is having proof for such payment. Insofar as the second defect, namely interstate purchases not reported in the monthly returns, is concerned, it is the claim of the petitioner that they have Form-C in support of their claim and therefore, the Assessing Officer is not justified in making the assessment on that aspect as well.

5. Learned counsel for the petitioner reiterated the above contentions and sought for setting aside the order of assessment.

6. On the other hand, the learned Government Advocate submitted that when a notice of proposal was issued, it is the duty on the part of the assessee to file their reply and therefore, the Assessing Officer cannot be found fault with, in passing the impugned order, in the absence of any reply from the petitioner.

7. Perusal of the facts and circumstances and also the materials placed before this Court, more particularly, the e-pay-in-slip for counter payment issued by the Indian Bank, Gudalur Branch on 28.07.2015, 30.09.2015, 26.10.2015 etc. placed in the typed set of papers would prima facie show that the petitioner seems to have made the payment of tax already and therefore, the demand made by the Assessing Officer for the period referred to in the notice of proposal seems to be factually incorrect. However, it is for the petitioner to place those materials before the Assessing Officer in order to arrive at a just and proper conclusion. The petitioner, instead of filing the reply in writing, seems to have approached the Assessing Officer in person and made their objections. Insofar as the second defect is concerned, as it is stated that the petitioners

are having C-Form in support of their claim with regard to the interstate purchases, again they have to place the same before the Assessing Officer to consider such claim as well. Therefore, this Court is of the view that the matter needs to go back to the Assessing Officer to re-do the assessment based on the materials to be placed by the assessee as discussed supra.

8. Accordingly, the Writ Petition is allowed and the impugned order of assessment is set aside without expressing any view on the merits of the claim made by the petitioner with the following directions:

(a) The petitioner shall file their objections with material documents to the notice of proposal dated 07.06.2018 within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such objection, the Assessing Officer shall hold enquiry, give an opportunity of personal hearing to the petitioner and pass fresh order of assessment on merits and in accordance with law within a period of eight weeks thereafter.

No costs. Consequently,connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi

To
The State Tax Officer,
Gudalur Assessment Circle,
Gudalur.

+1cc to Mr.R.Senniappan , Advocate SR.No. 76932
+1 cc to Government Pleader (Tax) Sr.No. 77338

W.P.No.1482 of 2019

ad
A.SK(09/10/2019)