IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.1646 of 2019
and
W.M.P.Nos.1836 & 1838 of 2019

M/s.SKM Constructions,
Rep. by its Proprietor S.K.Mahalingam,
Ramanathapuram, Mannur Post,
Pollachi, Coimbatore District. ...Petitioner

Vs

The Assistant Commissioner (ST),
Pollachi Rural Assessment Circle,
Pollachi, Coimbatore District. ...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 33822283166/12-13 dated 23.10.2018 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.M.Hariharan,
Additional Government Pleader (T)

O R D E R

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

2. The petitioner is aggrieved against the order of assessment passed in respect of assessment year 2012-13 dated 23.10.2018.

3. The petitioner is questioning the impugned order by contending that the Assessing Officer was not correct in levying tax on the maintenance and repair work on the buildings of P.W.D and on the payment of wages to labourers which is pure labour

work. The next objection raised against the imposition of penalty is that the Assessing Officer has not given an opportunity of personal hearing to the petitioner before imposing such penalty.

4. The learned Additional Government Pleader, on the other hand, submitted that the petitioner is not entitled for any indulgence from this Court since, he has not filed a reply to the notice of proposal nor utilised the opportunity of personal hearing as has been provided in the notice of proposal.

5.Heard both sides.

6.The petitioner disputes his liability to pay the tax by contending that such levy on the maintenance work and payment of wages to the labourers is improper. This Court, at this stage, is not expressing any view on such contention since, the petitioner admittedly, has not filed any reply to the notice of proposal. On the other hand, it is stated that the petitioner personally went and met the Assessing Officer and explained him with details. Needless to say that when a notice of proposal was given in writing, it is for the petitioner to give a reply in writing. In this case, the petitioner has not made any such reply. However, apart from imposing tax, the Assessing Officer has also imposed penalty at the rate of 150% under Section 27(3) of the said Act. It is true that the notice of proposal indicated that the petitioner may appear before the Assessing Officer at his office on the date of filing their objection and failure to file the written objection or to appear for personal hearing within the specified date, will result in passing order confirming the proposal. Therefore, it is evident that the Assessing Officer has not indicated any date of personal hearing even in the absence of any reply filed by the petitioner, more particularly, when the Assessing Officer has chosen to impose penalty. At this juncture, it is relevant to refer to a Circular issued by the Revenue in Circular No.7 of 2014. I myself considered the scope of Circular No.7/2014 in WP.No.6868 to 6874 of 2017 dated 21.03.2017 wherein at Paragraph Nos. 9, 10 & 11, it has been observed as follows:-

> "9. At this juncture, it is useful to refer to the Circular issued by the office of the Principal Secretary / Commissioner of Commercial Taxes, Chepauk, Chennai-6 in Circular No.7/2014, wherein, it is observed as follows:
>
> a) Passing of Orders:
> Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date

of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process.

(i) After issue of notice calling for the objections, if any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may be only it, there exists a genuine reason.

(ii) Objections filed by the dealer on the pre-assessment/revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised, in short, the speaking order which is complete shall be passed.

(iii) As the provision in the TNVAT Act stipulates the condition of granting of personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not.

10. Going by the above Circular issued by the Department and considering the fact that the pre-assessment notices and revised notices suggested, as though the petitioner is entitled for a personal hearing, the question that is to be gone into and decided in this case is as to whether the petitioner was really afforded such opportunity. As I pointed out earlier, the respondent has not intimated the petitioner about the date of personal hearing in pursuant to the objections filed by them. When such being the factual position, the only conclusion that can be arrived is that the respondent though stated that an opportunity of personal hearing would be given to the petitioner, has, infact, not afforded such opportunity to the petitioner by not informing the date of such hearing. Therefore, it is evident that the petitioner was not given such personal hearing and consequently, as rightly argued by the learned counsel for the petitioner, the impugned orders of assessment suffers on the ground of violation of natural justice.

11. Accordingly, this Court is satisfied to set aside the order of assessment only on the ground of violation of principles of natural justice, without going into any of the merits of the contentions raised by the parties on the orders of assessment. Consequently, the writ

petitions are allowed and the impugned orders of assessment are set aside and the matter is remitted back to the respondent for passing fresh orders of assessment, after affording opportunity of personal hearing to the petitioner by indicating the exact date of such hearing. After hearing the petitioner and considering all the aspects, the respondent shall pass fresh orders of assessment on its own merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order."

7. This Court has considered the scope of the above circular in very many cases and observed that it is the duty of the Assessing Officer to provide such personal hearing. In this case, as it has not been done, this Court is inclined to remit the matter back to the Assessing Officer for redoing the assessment, however, subject to the condition that the petitioner shall pay 15% of the tax liability.

8. Accordingly, the Writ Petition is allowed and the impugned order is set aside and consequently, the matter is remitted back to the Assessing Officer on the following terms and conditions:

(a) The petitioner shall pay 15% of the tax liability for assessment year 2012-13 within a period of two weeks from the date of receipt of a copy of this order along with the reply to the notice of proposal.

(b) On receipt of such reply and 15% of the tax liability, the Assessing Officer shall indicate the date of personal hearing.

(c) On completion of personal hearing, the Assessing Officer shall pass fresh order of assessment on merits and in accordance with law within a period of four weeks thereafter.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsi/vsi

To

The Assistant Commissioner (ST),
Pollachi Rural Assessment Circle,
Pollachi, Coimbatore District.

+1 cc to Mr.S.Ramanathan, Advocate Sr.No.6812
+1 cc to The Special Government Pleader, Sr.No.7234

W.P.No.1646 of 2019

SVI(CO)
CSL/18.02.2019