IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.1910, 1914, 1915 & 1917 of 2019
and
W.M.P.Nos.2113, 2117, 2124 & 2126 of 2019

M/s. Salora International Limited,
Represented by its Director
Gopal Sitaram Jiwarajka
D-13/4, Okhla Industrial Area,
Phase-II, New Delhi - 110020. ...Petitioner in all W.Ps

Vs.

The Assistant Commissioner of State Taxes,
Valluvarkottam Assessment Circle,
10, Palaniyappa Maligai,
Greams Road, Chennai-600006. ...Respondent in all W.Ps

Writ Petition No.1910 of 2019 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.33111502270/2010-11 and quash the order dated 16.11.2018 passed therein insofar as it levies tax on alleged purchase suppression, sale of colour television sets to ELCOT, sales return and reverses the ITC on alleged invalid purchase order.

Writ Petition No.1914 of 2019 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.33111502270/2009-10 and quash the order dated 15.11.2018 passed therein insofar as it levies tax on alleged purchase suppression, sale of colour television sets to ELCOT, sales return.

Writ Petition No.1915 of 2019 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.33111502270/2008-09 and quash the order dated 15.11.2018 passed therein insofar as it levies tax on alleged purchase suppression and sales return.

Writ Petition No.1917 of 2019 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.33111502270/2011-12 and quash the order dated 23.11.2018 passed therein insofar as it levies tax on alleged purchase suppression and export sales.

For Petitioner : Mrs.Hema Muralikrishnan (in all W.Ps)

For Respondent : Mr.M.Hariharan Additional Government Pleader (Tax) (in all W.Ps)

C O M M O N O R D E R

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

2. The petitioner is aggrieved against the orders of assessment dated 16.11.2018, 15.11.2018, 15.11.2018 and 23.11.2018 passed in respect of assessment years 2010-2011, 2009-2010, 2008-2009 and 2011-2012 respectively.

3. Heard Mrs.Hema Muralikrishnan, learned counsel appearing for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader (Tax) appearing for the respondent.

4. The main grievance of the petitioner before this Court is that the impugned assessment orders were passed in total non-application of mind to the fact that the petitioner appeared in person on 27.04.2018 and produced relevant materials before the Assessing Officer. It is further contended that when the notice of personal hearing dated 10.04.2017 was issued to the petitioner in respect of assessment years 2006-2007 and 2007-2008, as well fixing the date of personal hearing on 27.04.2018 as fixed for the present impugned assessment years and when the petitioner has appeared on the said day before the Assessing Officer and produced the documents in respect of all the assessment years, the Assessing Officer, though has rightly taken note of the appearance of the petitioner on 27.04.2018 in respect of the assessment years 2007-2008 and 2008-2009, has however, recorded as if the petitioner did not appear on that day in respect of the present impugned assessment years. Therefore, it is contended that it is total non-application of mind on the part of the Assessing Officer in concluding the assessment without considering the fact that the petitioner appeared and presented the documents on 10.04.2018 in respect of all these assessment years as well.

5. The learned counsel appearing for the petitioner, further contended that in respect of other issues, for which, personal hearing was provided on 03.05.2018, the petitioner is not aggrieved and therefore, they want to stick on to their personal hearing appearance on 27.04.2018 alone.

6. The learned Additional Government Pleader appearing for the respondent, on the other hand, contended that the petitioner did not appear for personal hearing in pursuant to the notice issued on 12.04.2018.

7. Perusal of the first notice dated 10.04.2018 would show that the same was issued in respect of the assessment years namely 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012, calling upon the petitioner to appear in person on 27.04.2018.

8. Perusal of the orders passed by the Assessing Officer in respect of assessment years 2006-2007 and 2007-2008 dated 27.04.2018 would show that the Assessing Officer has recorded the appearance of the petitioner on 27.04.2018 in pursuant to the notice dated 10.04.2018. Therefore, it is evident that the petitioner has appeared before the Assessing Officer on 27.04.2018 pursuant to the notice dated 10.04.2018. When such notice dated 10.04.2018 was issued referable to all the assessment years, I do not think that the Assessing Officer is correct in stating that the petitioner did not appear on the day of personal hearing viz.,27.04.2018 in respect of other assessment years, impugned in these writ petitions.

9. Therefore, I find that the impugned assessment orders passed by holding that the petitioner did not appear in person, is factually incorrect and therefore, such orders passed in total non-application of mind and violation of principles of natural justice cannot be sustained.

10. Accordingly, all these writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment after considering the objections filed by the petitioner and also giving one more opportunity of personal hearing. It is made clear that this Court is not expressing any view on the merits of the assessment as it is for the Assessing Officer to consider and decide. 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. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sni/mk

To

The Assistant Commissioner of State Taxes,
Valluvarkottam Assessment Circle,
10, Palaniyappa Maligai,
Greams Road, Chennai-600006.

+1 cc to The Special Government Pleader, SR.No.6230
+1 cc to M/s.L.Muralikrishnan, Advocate SR.No.5618

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1915 & 1917 of 2019

CSL/15.02.2019