IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.2288, 2292, 2294, 2299, 2300 & 2302 of 2019
and
WMP.Nos.2533, 2535, 2536, 2538, 2541 & 2542 of 2019

M/s.Marck India
Rep. by its Managing Partner
K.Arshan Husain ..Petitioner (in all WPs)

vs.

The Assistant Commissioner (ST) (FAC)
Periamet Assessment Circle
No.10, Greams Road, Palaniappa Maligai
Chennai-600 006. .... Respondent (in all WPs)

Writ Petitions 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 TIN/33650421587/2016-2017, 2014-2015, 2012-2013, 2011-2012, 2013-2014 & 2015-2016 dated 22.11.2018 and quash the same.

For Petitioner : Mrs.C.Uma (in all WPs)

For Respondent : Mr.M.Hariharan Additional Government Pleader (in all WPs)

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader 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. In all these writ petitions, the petitioner is one and the same, is aggrieved against the orders of assessment dated 22.11.2018 passed in respect of assessment years 2011-2012 to 2016-2017.

3. Heard Mrs.C.Uma, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader for the respondent.

4. The grievance of the petitioner before this Court is in twofold. Firstly, it is contended that the impugned assessment orders were passed by the Assessing Officer without applying his mind to the reply submitted by the petitioner to the notice of proposal, which contains all the facts and figures opposing the proposal. Secondly, it is contended that the impugned orders were passed in violation of principles of natural justice, since no personal hearing was given to the petitioner before concluding the assessment.

5. The learned counsel for the petitioner reiterated the above contentions and invited this Court's attention to the reply submitted by the petitioner to the notice of proposal along with its enclosures to substantiate that the findings rendered by the Assessing Officer as if the petitioner has not demarcated and explained the difference arrived by the figures in the balance sheet and monthly returns, is factually incorrect and without application of mind. Therefore, it is contended that had a personal hearing was given to the petitioner, they would have satisfied the Assessing Officer as to how the proposal was wrong.

6. On the other hand, the learned Additional Government Pleader contended that in the notice of proposal issued to the petitioner itself, they have been informed that they can utilize the opportunity of personal hearing within 15 days from the date of such notice. However, the learned Additional Government Pleader admitted to the position that the above findings rendered by the Assessing Officer as if the petitioner has not explained the difference is without any material discussion on the reply submitted by the petitioner, which contains certain enclosures.

7. There is no dispute to the fact that the petitioner in pursuant to the notice of proposal sent a reply by enclosing certain materials and objected the proposal. However, perusal of the impugned orders would show that the Assessing Officer, except by stating that the dealer has not explained the difference arrived by the figures in the balance sheet and monthly returns, has not referred to any of the materials furnished by the petitioner along with the reply. Therefore, this Court is of the view that the Assessing Officer ought to have gone into those materials and give a finding as to how such materials are either relevant or irrelevant on the proposal made. Even otherwise, as it is seen that the impugned proceedings were passed without providing an opportunity of

personal hearing, this Court is of the view that on that ground also, the impugned orders cannot be sustained. This Court has already considered the issue as to whether indicating the personal hearing on any one of the day within which the reply has to be filed, can be considered as an effective personal hearing and found that such course of action is not proper as such personal hearing has to be provided only after receipt of the reply from the assessee. But, in this case, it has not been done so.

8. Considering all these facts and circumstances, this Court is of the view that the petitioner is entitled to succeed without reference to the merits of the assessment only on the ground that the assessment orders were passed without application of mind to the reply submitted by the petitioner and without providing personal hearing. Accordingly, all these writ petitions are allowed and the impugned assessment orders are set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment after considering the objections raised by the petitioner and also after providing an opportunity of personal hearing. The whole 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. It is made clear that this Court is not expressing any view on the merits of the assessment. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mk
To

The Assistant Commissioner (ST) (FAC)
Periamet Assessment Circle
No.10, Greams Road, Palaniappa Maligai
Chennai-600 006.

+6cc to Mrs.C.Uma, Advocate, S.R.No.6327 to 6332
+1cc to the Special Government Pleader(T), S.R.No.7232

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2299, 2300 & 2302 of 2019

AK(Co)
CS/05/03/2019