IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.2499 & 2507 of 2019
and
W.M.P.Nos.2773, 2774, 2780 & 2781 of 2019

B.Senthil Kumar ...Petitioner in both WPs

Vs.

The Assistant Commissioner (ST),
Pollachi Rural Assessment Circle,
Pollachi,
Coimbatore
District. ...Respondent in both WPs

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN 33072285276/2013-2014 and TIN 33072285276/2014-2015 dated 18.12.2018 and to quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar
(in both WPs)
For Respondent : Mr.V.Haribabu
Additional Government Pleader (Tax)
(in both WPs)



C O M M O N O R D E R

Mr.V.Haribabu, 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. These writ petitions are filed challenging the orders of assessment dated 18.12.2018 passed in respect of assessment years 2013-2014 and 2014-2015.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

4. The main grievance expressed by the petitioner before this Court against the impugned orders, apart from raising other contentions on merits, is that the Assessing Officer has violated the principles of natural justice by not affording personal hearing to the petitioner as mandatorily required while passing the assessment orders under Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006.

5. It is seen that in pursuant to the notice of proposal, the petitioner filed their reply by specifically contending that they have filed their annual return and that the rate of tax attracted is only 2% and not 14.5% as alleged in the notice of proposal. The petitioner also requested the Assessing Officer to drop the proposal for penalty. However, the Assessing Officer without conducting any personal hearing has passed the impugned orders by imposing tax @ 14.5% after making equal addition and penalty @ 150% on the petitioner by way of best judgment of assessment.

6. Needless to say that the Assessing Officer before making equal addition and also imposing penalty, ought to have been given an opportunity of personal hearing to the petitioner, more particularly, when the petitioner disputed the very rate of tax applicable to the instant case. As the Assessing Officer failed to provide such opportunity of personal hearing, this Court finds that the orders impugned in these writ petitions, suffer solely on the ground of violation of principles of natural justice.

7. Therefore, without expressing any view on the merits of the matter, 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 providing an opportunity of personal hearing to the petitioner. Thereafter, the Assessing Officer shall pass fresh orders of assessment on merits and in accordance with law, as this Court is not expressing any view on the merits of the assessment. The Assessing Officer shall pass such fresh orders of assessment within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS )

//True Copy//

Sub Assistant Registrar

sni/mk

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

+2cc to Mr.R.Hemalatha, Advocate SR.No. 7897,7896
+1 CC TO GOVERNMENT PLEADER SR.NO. 8449

W.P.Nos.2499 & 2507 of 2019

A.SK(27/02/2019)