IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.10094 to 10096 of 2018
and
W.M.P.Nos.12052, 12053 & 12054 of 2018

M/s.Marutham Apartments
Rep. by its Partner Mr.R.Ramesh
No.32/11, 4th Cross Street
Ganga Nagar, Kodambakkam
Chennai-600 094. ...Petitioner in all W.P.s

vs.

1. The Assistant Commissioner (CT)
MMDA Colony Assessment Circle
No.10, Palaniappa Maligai
2nd Floor, Greams Road
Chennai-600 006.

2. The Commercial Tax Officer
Group III Enforcement (Central)
PAPJM Buildings, Greams Road,
Chennai-600 006. ...Respondents in all W.P.s

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in TIN.33691482648/2010-2011, dated 26.03.2018, TIN.33691482648/2011-2012, dated 20.02.2018, and TIN.33691482648/2012-2013, dated 26.02.2018, respectively quash the same and further direct the first respondent to call for the books of accounts and other connected records and thereafter, pass orders in accordance with the provisions of the Tamil Nadu Value Added Tax Act, 2006 after affording an adequate opportunity including an opportunity of being heard and thereafter, pass orders in accordance with law.

For Petitioner in all W.P.s :Mr.V.Sundareswaran

For Respondents in all W.P.s :Mrs.G.Dhana Madhiri
Government Advocate

C O M M O N O R D E R

These writ petitions are filed challenging the orders of assessment relevant to the assessment years 2010-2011, 2011-2012 and 2012-2013 dated 26.03.2018, 20.02.2018 and 26.02.2018.

2. Heard both sides.

3. The main grievance of the petitioner is that the Assessing Officer has passed the impugned assessment orders without reference to the objections filed by the petitioner and providing an opportunity of personal hearing. It is contended that when the notices of proposal dated 15.09.2017 were served on the petitioner, the petitioner through letters dated 03.10.2017, sought time to file reply and however, the Assessing Officer even before filing such reply, fixed the date of personal hearing on 11.10.2017. It is further contended that the petitioner has filed their objections on 21.11.2017 and thereafter, no opportunity of personal hearing was given to the petitioner and on the other hand, the impugned orders were passed without even referring to the objections dated 21.11.2017 filed by the petitioner. Hence, it is contended that the impugned orders violated the principles of natural justice and thus, the matter has to go back to the Assessing Officer for redoing the assessment after giving due opportunity of hearing to the petitioner as well as by considering the objections already filed by the petitioner.

4. On the other hand, the learned Government Advocate appearing for the respondents contended that the petitioner was served with the notices of personal hearing dated 03.10.2017 by fixing personal hearing on 11.10.2017 and however, they have not utilized such opportunity. She further contended that the objections filed by the petitioner were considered and thereafter, the impugned orders were passed.

5. The orders impugned in these writ petitions pertain to the assessment years 2010-2011 to 2012-2013. It is seen that the notices of proposal were issued on 15.09.2017. It is stated that the petitioner instead of filing the reply, through their communication dated 03.10.2017 has sought further time to file the same. However, the Assessing Officer fixed the date of personal hearing on 11.10.2017 even before receiving the objections from the petitioner. It is further seen that the petitioner has filed their objections subsequently on 21.11.2017 and the copy of the letter delivery book filed before this Court shows that such reply was filed before the Assessing Officer on 21.11.2017. Therefore, personal hearing should have been fixed subsequent to such filing of the objections. In this case, it has not been done so. The Assessing Officer has not even referred to the said

objections filed on 21.11.2017 in his impugned orders. On the other hand, he referred to the letter dated 03.10.2017 as if it was the reply filed by the petitioner, while in fact, the letter dated 03.10.2017 is for seeking time to file reply. Therefore, it appears that some confusion has arisen in the mind of the Assessing Officer with regard to the objections filed by the petitioner. Admittedly, the assessment orders were passed without hearing the petitioner in person.

6. Considering all these aspects, this Court is of the view that it is better for the Assessing Officer to hear the petitioner and pass fresh orders after considering the objections already filed by them on 21.11.2017. At the same time, this Court is not expressing any view on the merits of the matter, as it is for the Assessing Officer to consider and decide the same. Accordingly, these Writ Petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer for redoing the assessment after providing an opportunity of personal hearing to the petitioner and also by considering the objection already filed on 21.11.2017. The petitioner shall file necessary documents before the Assessing Officer for the purpose of completing the assessment, at the time of personal hearing. After completion of such personal hearing, the Assessing Officer shall pass fresh orders on merits and in accordance with law. The whole exercise shall be completed by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

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To

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Chennai-600 006.

2. The Commercial Tax Officer
Group III Enforcement (Central)
PAPJM Buildings, Greams Road,
Chennai-600 006.

+1cc to Mr.V.Sundareswaran, Advocate SR.90851
+1cc to Spl Government Pleader (Taxes) SR.91289

W.P.Nos.10094 to 10096 of 2018

PA(CO)
CB(25/11/2019)