IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.01.2019
CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.2764 of 2019
and
W.M.P.Nos.3033 & 3034 of 2019

M/s.Sivaji Agencies,
Rep. by its Proprietor D.Sivaji,
No.3, School Street,
Sathuvachari, Vellore - 9. ...Petitioner

Vs

The State Tax Officer,
Vellore (Rural),
Vellore. ...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 33144323353 of 2016-17 dated 29.01.2018 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

This writ petition is filed challenging the order of assessment dated 29.01.2018 passed in respect of the assessment year 2016-17.

2. The main grievance of the petitioner before this Court is that the Assessing Officer violated the principles of natural justice by not affording an opportunity of personal hearing.

3. Learned counsel for the petitioner contended that the assessment was made, based on some presumption that the suppression exceeded the threshold limit of Rs.50 lakhs without considering the actual turnover of the subject matter assessment year.

4. Learned Additional Government Pleader, on the other hand, contended that the objections raised by the petitioner were considered and therefore, the Assessing Officer cannot be found fault with in completing the

assessment, based on the materials available before him. However, learned Additional Government Pleader is not disputing the fact that the opportunity personal hearing was not afforded to the petitioner.

5. Heard both sides.

6. It is seen that the Assessing officer has passed the impugned order by imposing tax and also penalty without giving an opportunity of personal hearing to the petitioner. In fact, the reply submitted by the petitioner to the notice of proposal would show that the petitioner informed the Assessing Officer to provide the Bank statement for his reference and verification to show that the entire payment to the suppliers was only through Bank transaction or through cheque. However, the Assessing Officer, without giving an opportunity of personal hearing to the petitioner has proceeded and passed the assessment order based on the objections filed by the petitioner. Therefore, this Court is of the view that the matter needs to go back to the Assessing Officer to redo the assessment after affording an opportunity of personal hearing to the petitioner. However, such indulgence can be shown to the petitioner only by putting them on some terms since the petitioner has approached this Court and filed the present writ petition after one year from the date of assessment order.

7. Accordingly, the writ petition is allowed and the impugned assessment order is set aside and the matter is remitted back to the Assessing Officer to redo the assessment on the following terms and conditions.

(a) The petitioner shall pay 15% tax liability within a period of two weeks from the date of receipt of a copy of this order before the Assessing Officer.

(b) On receipt of such payment, the Assessing Officer shall fix the date of personal hearing and inform the same to the petitioner.

(c) On completion of such 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, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsi

To

The State Tax Officer,
Vellore (Rural),
Vellore.

+1cc to Mr. S.Ramanathan, Advocate SR.No.7937

+1 CC TO GOVERNMENT PLEADER SR.NO. 9029

W.P.No.2764 of 2019

A.SK(19/02/2019)