IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

WP.No.2980 of 2019
and
WMP.No.3249 of 2019

Wood 'N' Craft
Represented by its Proprietrix
S.Gowthami ...Petitioner

Vs.

The State Tax Officer
(The Commercial Tax Officer)
N.H.Road Circle, Coimbatore. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the files of the respondent herein in Ref.TIN.No.33981901868/2015-2016 dated 07.01.2019 quashing the same.

For Petitioner : Mr.K.Narayanan
for Mr.N.Inbarajan

For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader

O R D E R

Mr.Mohammed Shaffiq, learned Special Government Pleader takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 07.01.2019 passed in respect of assessment year 2015-2016.

3. The grievance of the petitioner before this Court against the impugned assessment order is as follows:

The Assessing Officer has simply relied on the report furnished by the Enforcement Wing Officers for concluding the assessment, which course of action is impermissible, since the Assessing Officer has to apply his independent mind and pass orders on merits and in accordance with law on the proposal made. Secondly, the Assessing Officer has not given sufficient opportunity to the petitioner to place their objections against the proposal even though the time was sought for filing such reply through communication dated 12.12.2018. The Assessing Officer has also not afforded an opportunity of personal hearing to the petitioner. Therefore, the assessment order violates the principles of natural justice as well.

4. The learned counsel for the petitioner reiterated the above contentions and thus, submitted that the impugned assessment order cannot be sustained.

5. The learned Special Government Pleader for the respondent, on the other hand, contended that the petitioner's request seeking for time was considered and a communication was issued on 13.12.2018 granting time till 02.01.2019 and however, the assessee did not file their reply. Therefore, he contended that the Assessing Officer is left with no other option except to conclude the assessment. However, the learned Special Government Pleader is fair enough to admit that the Assessing Officer has not afforded an opportunity of personal hearing to the petitioner.

6. Heard both sides.

7. Perusal of the impugned order would show that the Assessing Officer placed his reliance on the report submitted by the Enforcement Wing Officers for concluding the assessment. It is seen that in pursuant to the notice of proposal, the petitioner through their communication dated 12.12.2018 sought 30 days time for filing their reply. The receipt of such communication is admitted by the Assessing Officer in the impugned order itself. However, it is stated that through the communication dated 13.12.2018, the assesee was informed to file such reply on or before 02.01.2019. The learned counsel for the petitioner denies the above contention and states that no such communication was served on the petitioner. In any event, as it is an admitted position that the assessment order was passed based on the report submitted by the Enforcement Wing Officers and not after providing an opportunity of personal hearing, this Court is of the view that one more opportunity can be given to the petitioner so as to enable them to file their objections to the notice of proposal so as to enable the Assessing Officer to pass the order of assessment on merits and in accordance with law, after providing personal hearing to the petitioner as well.

8. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment under the following terms and conditions:

(a) The petitioner shall send a reply to the notice of proposal within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such reply, the Assessing Officer shall fix the date of personal hearing.

(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.

It is made clear that this Court is not expressing any view on the merits of the assessment. No costs. Connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

mk

To

The State Tax Officer
(The Commercial Tax Officer)
N.H.Road Circle,
Coimbatore.

+1cc to Mr.N.Inbarajan, Advocate SR.No.8543

+1cc to Special Government Pleader (Taxes) SR.No.9030

W.P.No.2980 of 2019

GMY(05/02/2019)