IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.3909, 3911, 3915, 3917,
3919, 3920 and 3922 of 2019
and
WMP.Nos. 4336, 4341,4345,
4347, 4348 and 4350 of 2019

Tvl. Loid Leathers
represented by its Proprietor,
No.5, M.V.Badran Street,
Periamet, Chennai-600 003.

...Petitioner in all W.Ps.

Vs

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

..Respondent in all W.Ps.

....

Prayer in W.P.No.3909 of 2019 :

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the respondent vide his order of Assessment in TIN 33520523266/2010-11 dated 30.11.2018 and quash the same as illegal, unconstitutional for having been passed in violation of principles of natural justice and further direct the respondent to pass fresh orders in accordance with law after granting an opportunity of personal hearing to the petitioner.

Prayer in W.P.No.3911 of 2019 :

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the respondent vide his order of Assessment in TIN 33520523266/2011-12 dated 30.11.2018 and quash the same as illegal, unconstitutional for having been passed in violation of principles of natural justice and further direct the respondent to pass fresh orders in accordance with law after granting an opportunity of personal hearing to the petitioner.

Prayer in W.P.No.3915 of 2019 :

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the respondent vide his order of Assessment in TIN 33520523266/2012-13 dated 30.11.2018 and quash the same as illegal, unconstitutional for having been passed in violation of principles of natural justice and further direct the respondent to pass fresh orders in accordance with law after granting an opportunity of personal hearing to the petitioner.

Prayer in W.P.No.3917 of 2019 :

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the respondent vide his order of Assessment in TIN 33520523266/2013-14 dated 30.11.2018 and quash the same as illegal, unconstitutional for having been passed in violation of principles of natural justice and further direct the respondent to pass fresh orders in accordance with law after granting an opportunity of personal hearing to the petitioner.

Prayer in W.P.No.3919 of 2019 :

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the respondent vide his order of Assessment in TIN 33520523266/2014-15 dated 30.11.2018 and quash the same as illegal, unconstitutional for having been passed in violation of principles of natural justice and further direct the respondent to pass fresh orders in accordance with law after granting an opportunity of personal hearing to the petitioner.

Prayer in W.P.No.3920 of 2019 :

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the respondent vide his order of Assessment in TIN 33520523266/2015-16 dated 30.11.2018 and quash the same as illegal, unconstitutional for having been passed in violation of principles of natural justice and further direct the respondent to pass fresh orders in accordance with law after granting an opportunity of personal hearing to the petitioner.

Prayer in W.P.No.3922 of 2019 :

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the respondent vide his order of Assessment in TIN 33520523266/2017-18 dated 30.11.2018 and quash the same as illegal, unconstitutional for having been passed in violation of principles of natural justice and further direct the respondent to pass fresh orders in accordance with law after granting an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.R.Ganesh Kanna

For Respondent : Mr.M.Hariharan,
Additional Government Pleader

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of both sides, the Writ Petitions are taken up for final disposal at the stage of admission.

2. The period involved in these writ petitions is 2010-11 to 2015-16 and 2017-18 and assessments dated 30.11.2018 have been assailed on the ground of lack of opportunity provided to the petitioner/dealers prior to finalization of the same. In addition, Mr.R.Ganesh Kanna, learned counsel for the writ petitioner also points out that in the reference to the assessment order, though reference is made to personal hearing afforded to the dealer on 29.11.2018, no personal hearing was granted, either on the aforesaid, or any other date.

3. There can really be no quarrel on the position that the impugned orders of assessment are wholly non-speaking and quite apart from the issue of whether personal hearing was granted or not, I extract the operative portion in order of assessment in relation to the first year in question i.e., 2010-2011 to illustrate the manner in which the assessments have been completed for all the years in question:

> ' The reply provided by the dealer was examined. The dealer has presented few invoice copies to support their contention. The documents submitted were not sufficient to prove that there is no difference in purchase turnover. Hence the proposal is confirmed and the dealer is liable to reverse Input Tax Credit of Rs.46,991.00. Also, penalty is levied at 100% of the tax

liability, as per Section 27(3) of TNVAT Act 2006'.

4. An order of assessment that is subject to statutory appeal, as in the present case, has to contain reasons for the adjustments made therein. Unless the reasons that have weighed in the mind of the Assessing Officer are indicated clearly in the order itself, the assessee would be groping in the dark and hardly in a position to formulate grounds of appeal challenging the adjustments/additions before the appellate authorities.

5. In the light of the impugned orders before me being entirely non- speaking and also having been passed in violation of the principles of natural justice, the same are set aside. The petitioner/assessee will appear before the Assessing Officer at the first instance on 04.03.2019 and the assessments will be completed by way of speaking orders, within a period of one (1) month from the date of conclusion of the personal hearing by the respondent/Assessing Officer who will afford adequate opportunity to the petitioner prior to completion of the same.

6. The Writ Petitions are disposed of in the above terms. No costs. Consequently, the connected Miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//
Sub Assistant Registrar

mrn

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

+7cc to Mr.A.Ravichandran, Advocate, S.R.No.12424 to 12430

W.P.Nos.3909, 3911, 3915, 3917, 3919, 3920 and 3922 of 2019 and WMP.Nos. 4336, 4341,4345, 4347, 4348 and 4350 of 2019

CS/25/02/2019