IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

CORAM :

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.6724, 6729, 6732, 6734, 6739, 6741, 6743 & 6746 of 2019
and
W.M.P.No.7537, 7540, 7546, 7547, 7549, 7551, 7552 & 7553 of 2019

Mico Leather Exports,
Represented by its Proprietor,
R.Mohammed Iyoob,
1/A Jalal Road Extension,
Maligai Thope, Ambur. ... Petitioner in all W.Ps

Vs.

The State Tax Officer,
Ambur. ... Respondent in all W.Ps

PRAYER in WP.No.6724 of 2019:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the Respondent herein in TIN No.33204260852/2010-11, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018 dated 31.07.2018 as confirmed by the proceedings in TIN No.33204260852/2010-11 dated 31.01.2019 quashing the same.

For Petitioner : Mr.K.Narayanan
for Mr.N.Inbarajan.
For Respondent : Mr.V.Haribabu,
Additional Government Pleader (Taxes).

C O M M O N O R D E R

These batch of eight Writ Petitions are challenges orders of assessment under the provisions of the Tamil Nadu Value Added Tax (in short 'Act') for the period from 2010-11 to 2016-17 and provisional assessment for the three (3) months period prior to that of the inception of Goods and Services Tax i.e., 01.04.2017 to 30.06.2017.

2.Heard Mr.K.Narayanan, learned counsel for Mr.N.Inbarajan, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (T) for the respondent.

3.The issue on merits in the of the assessments concerns reversal of input tax credit on invisible loss occasioned in the course of manufacturing process. De hors this, the main ground argued by the learned counsel for the petitioner and by

Mr.Haribabu, learned Additional Government Pleader who has taken notice for the respondent, is the violation of principles of natural justice.

4.Notices appeared to have been issued by the assessing authority for all periods in question on 31.07.2018. After calling for various particulars from the petitioner, the assessing officer grants an opportunity of personal hearing in the following terms:-

> "You are also hereby given an OPPORTUNITY for PERSONAL HEARING within 15 days from the date of RECEIPT of this notice, and you may appear in person at the following address and you are requested to utilize the opportunity to file your objections and produce other connected evidences and documents in favour of your accounts if any."

The notices are identical in respect of all the periods in question.

5.In response thereto, the petitioner has filed reply dated 18.07.2018 in respect of the period 2010-2011. Though no written reply has been filed in respect of the other years, learned counsel states that an oral request has been made seeking time to file a reply in respect of the other years as well. Mr.Haribabu, learned Additional Government Pleader does not wish to file a counter in the matter. He has produced the files and has obtained instructions from the assessing officer in regard to the assessments. In relation to the issue of violation of principles of natural justice he confirms that a reply dated 18.07.2018 filed by the assessee is available and no written reply has been filed as far as the other years are concerned.

6.Be that as it may, a perusal of the assessment orders indicate that even for the year where a written reply has been filed, the assessing officer merely extracts the same in entirety in the body of the order and rejects the same, in one line stating:

> "Finally, all the objections filed by them is overruled and the proposals are confirmed"

7.The manner of disposal of objections as above is clearly unacceptable. Moreover, as far as other years are concerned the assessing officer has merely indicated a range of days when the assessee may appear before him, He thereafter concludes the assessments stating that the petitioner has not availed the opportunity of personal hearing, granted by him. I am of the view that opportunity of personal hearing to be effective, should involve fixation of a specific date and time when the matter will be heard by the assessing officer. Indicating a range of days where the assessee may appear does not, in my view, amount to effective opportunity of personal hearing, as the assessee cannot be expected to anticipate the availability of the assessing officer nor the assessing officer expected to be available at their desk during the entirety of all working days. It is thus necessary that a specific date and time be fixed when the assessee will appear before the Assessing Officer and make their submission. This has not been done in this case and I am thus of the view that the principles of natural justice stand violated. The assessments are thus liable to be set aside and I do so.

8.Pursuant to the receipt of orders of assessment, the petitioner has filed an application under Section 84 of the Act, dated 10.01.2019. The same has been considered by the assessing officer and dismissed on 31.01.2019 stating that there is no error apparent on the face of the record.

9.The petitioner will appear before the assessing officer on 11.04.2019 at 10.30 am or on any date which is proximate to the aforesaid date, subject to the convenience of the officer and to be intimated to the petitioner and the assessments will be re-done de novo and in accordance with law, after hearing the petitioner, within a period of six weeks from the conclusion of personal hearing. No further notice of appearance will be issued to the petitioner.

9.These Writ Petitions are disposed of in the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

sai

To

The State Tax Officer,
Ambur.

+1 CC to Spl. Govt. Pleader(T)sr 30036.
+8 Ccs to Mr.N.Inbarajan, Advocate sr 29389.

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SP(11/04/2019)