IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.6717 of 2019
and
WMP.No.7529 of 2019

Tvl.Anuj Traders
Represented by its Proprietor
Mrs.Sapna Jain ...Petitioner

vs.

The Assistant Commissioner (ST)
Shevapet (North) Assessment Circle
3rd Floor, Commercial Taxes Office Building
Pitchard's Road, Hastampatty,
Salem-7. ...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 TIN/33912740811/2007-2008 dated 05.02.2019 and quash the same.

For Petitioner : Mr.A.N.R.Jayaprathap

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Taxes)

O R D E R

The petitioner is aggrieved against the order of assessment dated 05.02.2019 relating to assessment year 2007-2008.

2. The petitioner has chosen to challenge the impugned assessment order before this Court mainly by contending that the same was passed in violation of principles of natural justice. According to the petitioner, the Assessing Officer relied on certain third party documents to pass the impugned order without furnishing the same to the petitioner. It is further contended that the Assessing Officer has been carried over by the report of the Inspecting Officer and therefore, the order of assessment does not disclose independent application of mind. Thus, it is contended that, if an opportunity is provided to the petitioner by furnishing those third party documents, the petitioner will

be in a position to satisfy the Assessing Officer that the proposals are not sustainable.

3. A counter affidavit is filed by the respondent, in which, it is stated that though the petitioner was provided with an opportunity of personal hearing for more than one occasion, they have not utilized the same. It is also specifically stated in the counter affidavit that the petitioner was called upon to appear in person at the office of the respondent to get the copies of the documents required by them and however, the petitioner did not utilize such opportunity.

4. The learned counsel for the petitioner submitted that on two occasions, the petitioner could not appear, because the authorized representative of the petitioner was not in station at that time. He further submitted that in respect of all other occasions, though the petitioner appeared before the respondent, he was asked to wait outside the office for the whole day and however, he was not provided with the copies of the documents sought for.

5. The learned Government Advocate denied those allegations.

6. Upon considering the above stated facts and circumstances and perusing the impugned order of assessment, it is evident that the order of assessment was passed in the absence of any reply filed by the petitioner. There is no dispute to the fact that the petitioner sought for third party documents, which are relied on by the Assessing Officer. It is also not in dispute that those documents were not furnished to the petitioner so far. Needless to say that the petitioner will be in a position to furnish an effective reply, when those documents are furnished to them. Therefore, this Court is inclined to remit the matter back to the Assessing Officer to redo the assessment once again after furnishing those documents to the petitioner.

7. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer with the following directions:

> (a) The petitioner shall appear before the Assessing Officer on 25.09.2019, on which day, the Assessing Officer shall furnish third party documents relied by her in the impugned proceedings.
>
> (b) On receipt of those documents, the petitioner shall file their objections/reply to the notice of proposal within a period of two weeks thereafter.

(c) On reply of such objections/reply, the Assessing Officer shall fix the date for personal hearing and inform the same to the petitioner.

(d) On completion of such personal hearing, the Assessing Officer shall pass final 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 claim made by the petitioner on the assessment so made, since it is for the Assessing Officer to consider and decide the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST)
Shevapet (North) Assessment Circle
3rd Floor, Commercial Taxes Office Building
Pitchard's Road, Hastampatty,
Salem-7.

+1 cc to Mr.A.N.R.Jayaprathap, Advocate, S.R.No.80336

W.P.No.6717 of 2019

NMI(CO)
SSM(19/09/2019).