

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.7905, 7918 & 7924 of 2019

and

W.M.P.Nos.8513, 8514, 8527, 8528, 8532 & 8533 of 2019

T.M.Natarajan & Company
rep. by its Partner,
T.M.Natarajan,
S/o Mayilsamy Chettiar
No.2/61, Thippampatti,
Pollachi-642 107

...Petitioner in all the W.Ps.

Vs.

1. The Assistant Commissioner,
Pollachi Rural Assistant Circle,
Pollachi - 642 001
2. The Branch Manager,
Oriental Bank of Commerce,
B/o Pollachi,
No.91, New Scheme Road,
Pollachi - 642 001.

... Respondents in all the W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the 1st respondent in its proceedings in TIN 33692283577/13-14, TIN 33692283577/12-13 & TIN 33692283577/14-15 respectively dated 30.11.2018 and quash the same as it is arbitrary, invalid, illegal and unconstitutional.

For Petitioner Mr.P.Muthukrishnan

For Respondents: Mr.V.Haribabu,
Additional Government Pleader (Tax)
for R1

C O M M O N O R D E R

These three writ petitions are filed challenging the orders of assessment passed under section 22(4) of the Tamil Nadu VAT Act, 2006 for the relevant years 2012-13, 2013-14 & 2014-15.

2. The challenge made against the impugned assessment orders is mainly resting upon the ground of violation of principles of natural justice. It is seen that notice of proposal was issued on the assessee for each assessment years on 11.12.2017. On receipt of such notice, the assessee filed reply. It is specifically contended by the assessee that they submitted all the TDS certificates and annual returns and got certified from the respondent office and therefore, proposing to impose tax at the rate of 14.5% is not proper and on the other hand, for the works contract, the rate is only 2%. The assessee has also requested to drop the proposal for imposing penalty under section 22(4). Thereafter, the impugned orders of assessment were passed without affording an opportunity of hearing to the petitioner.

3. Learned counsel for the petitioner contended that when there is a proposal to impose penalty, necessarily he should have been provided an opportunity of hearing before concluding the assessment, more particularly, when the Assessing Officer has chosen to confirm the penalty as well.

4. Per contra, the learned Additional Government Pleader contended that even in the notice of proposal, the petitioner was informed that if they wish to have personal hearing, they may appear before the Assessing Officer on the date of filing their objections. Therefore, he submitted that the petitioner is not entitled to contend otherwise.

5. Heard both sides and perused the materials placed before this Court.

6. There is no dispute to the fact that immediately on receipt of the notice of proposal to include penalty, the petitioner filed their objection and sought to drop the penalty as well. According to the petitioner, the rate of tax is 2% and not 14.5%.

7. This Court, at this stage, is not expressing any view on the merits of the claim made by the petitioner as it is for the Assessing Officer to consider and decide. However, this Court is inclined to interfere with the impugned orders of assessment only on the ground that the same came to be passed without

providing an opportunity of personal hearing to the petitioner, especially, when the Assessing Officer has chosen to confirm the proposal for imposing penalty. Needless to say that when an order of assessment is passed under section 22(4), the assessee has right to be heard in person. In this case, it has not been done. The personal hearing should be given only after filing the reply to the notice of proposal. Therefore, informing the assessee in the notice of proposal itself to appear for personal hearing along with reply cannot be construed as an effective personal hearing. Why I am emphasizing so is for the following reasons:

a) On receipt of the notice of proposal, the assessee has to file the objections.

b) On considering the objections, any one of two events are possible as stated hereunder:

i) the assessing officer may drop the proposals either wholly or partly;

or

ii) may confirm the proposals either in part or whole.

c) The above events, thus, should take place only on application of mind on the objections so filed.

d) After considering the objections, if the assessing officer intends/decides to drop the proposal as a whole, there is no need for personal hearing.

e) On the other hand, if the assessing officer intends/decides to confirm the proposal either in part or whole, then he should invite the assessee for personal hearing. Thereafter, only when these procedures are followed, it can be said that an effective personal hearing has taken place.

8. Therefore, only on the ground of violation of principles of natural justice, the impugned orders of assessment are set aside. The Writ Petitions are allowed and the matter is remitted back to the Assessing Officer for redoing the assessment afresh and pass orders on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner. The whole exercise shall be done by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition are closed.

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Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner,
Pollachi Rural Assistant Circle,
Pollachi - 642 001

+lcc to The Special Government Pleader (Taxes) sr.79257

+lcc to Mr.P.Muthukrishnan, Advocate sr.78925

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