IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

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THE HONOURNABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.26452 & 26458 of 2019
and
W.M.P.Nos.25814, 25818, 25822 & 25824 of 2019

Schwing Stetter Private (India) Limited
F-21, SIPCOT Park,
Irungattukottai,
Sriperumbadur Taluk - 602 117
Represented by its Authorized Signatory
N.Rajamanickam ...Petitioners in both the W.Ps.

Vs.

The Assistant Commissioner (ST),
Poonamallee Assessment Circle,
Varadrajapuram - 602 103.
(Cause title amended as per order
dated 13.09.2019 in W.M.P.Nos.26786 & 26799/2019
in W.P.Nos.26452 & 26458/2019
by KRCBJ .. Respondent in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the impugned orders bearing CST No.722138/2014-15 and dated 27.06.2019 and CST No.722138/2015-16 and dated 02.07.2019 respectively passed by the respondent and to quash the same.

For Petitioners: Mr.Karthik Sundaram

For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader (Tax)

COMMON ORDER

Both these writ petitions are filed challenging the order of assessment dated 27.06.2019 and 02.07.2019 relevant to the assessment year 2014-15 and 2015-16 respectively.

2. The grievance of the petitioners in these writ petitions is that the impugned order of assessment was passed in each case without considering the objections filed by the petitioners in response to the notice of proposal and therefore, it violates

the principles of natural justice. It is further contended that the Assessing Officer has proceeded to pass the impugned orders only by observing that this Court upheld the constitutional validity of Section 2(11) of the Tamil Nadu VAT Act, by order dated 05.04.2016, without considering the fact that the Division Bench, even though upheld the validity of Section 2(11), has specifically granted liberty to the dealers to submit their objections and therefore, such objections are to be considered and decided on merits.

3. Learned counsel for the petitioners further submitted that when similar orders were passed in this writ petitioner's case in respect of the assessment years 2007-08 to 2012-13, the same were challenged and this Court in W.P.Nos.22630 to 22636 of 2017 set aside those orders of assessment on the ground of violation of principles of natural justice and remitted the matter back to the Assessing Officer to re-do the assessment after considering the objections filed by the petitioners. Therefore, the learned counsel submitted that the very same relief is to be granted in these two cases as well.

4. Learned Special Government Pleader fairly submitted that since the impugned orders of assessment were passed without reference to the objections raised by the petitioners, the matter may be remitted back to the Assessing Officer to re-do the assessment, after considering those objections.

5. Heard the learned counsel for the petitioners and the learned Special Government Pleader appearing for the respondent.

6. It is seen that the very same petitioner has approached this Court and challenged similar orders of assessment passed in respect of assessment year 2007-08 to 2012-13 by raising very same contentions as raised in these cases. It is seen that those writ petitions were disposed of on 07.12.2017, by observing as follows:

> 17. The decision rendered by this Court, in the case of R G E Digital Imaging Solutions (P) Ltd., (supra) cannot be of any assistance to the case of the petitioner, as the issues and the facts thereunder were not akin to the facts in the batch of cases, which were heard by the Division Bench. Having steered clear of this position, it has to be seen as to whether the first respondent is justified in passing the impugned orders, purportedly, to be consequence upon the decision of the Division Bench, dated 05.04.2016. Unfortunately, the Assessing Officer failed to note that the Division Bench has only decided the constitutional validity of the Section 2 (11), and with regard to other issues, granted liberty to the dealers to submit their

objections, if they have approached at the stage of the revision notices, as in the petitioner's case.

18. Thus, the first respondent was bound to consider the objections filed by the petitioner, and pass a speaking order. It would be incorrect on that part of the first respondent to state that, merely because, vires of Section 2 (11) has been upheld, the petitioner will not heard on merits and are required to remit the differential rate of tax. If this is the interpretation given by the first respondent, it would run contrary to the decision of the Division Bench, dated 05.04.2016, wherein, liberty was granted to file objections to revision notices. This liberty is not an empty formality. Therefore, the Assessing Officer, the first respondent is bound to consider the objections. However, this Court would add a word of caution that, if the petitioner seeks to canvass the very same grounds, that were raised before the Division Bench, while challenging the vires of Section 2 (11), it would be well open to the Assessing Officer to reject such contentions, as has already been considered by the Division Bench and rejected. In any event, the Assessing Officer is bound to say so, as he is the statutory Authority, vested with power of assessment. In the instant cases, the petitioner specifically sought for an opportunity of personal hearing, which has not been afforded. The Division Bench, in several decisions has observed that, in the absence of specific prohibition under the statute, for affording an opportunity of personal hearing, the Assessing Officer could afford such personal hearing, as it would help the Assessing Officer to complete the assessment in a proper manner.

19. Thus, this Court is satisfied that the impugned orders have been passed in violation of the principles of natural justice. As pointed out earlier, the oral prayer sought for by the petitioner, seeking leave of this Court to file Review Petitions before the second respondent cannot be acceded to, in the light of the facts noted above and observations made thereon.

20. Therefore, for the reasons stated above, the Writ Petitions are allowed, the impugned orders are set aside and b the first respondent is directed to consider the objections filed by the petitioner, dated 06.04.2017, afford an opportunity of personal hearing to the authorized representative of the petitioner and pass a speaking order on merits and in accordance with law. As stated above, if the first respondent is of the view that the petitioner is

> attempting to re-argue the points canvassed before the Division Bench, it is well open to the first respondent to say so and reject the objections. The first respondent is expected to consider the other factual issues, which may be canvassed by the petitioner by way of objections, dated 06.04.2017. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

7. In the present case on hand also, the Assessing Officer has not referred to the objections filed by the petitioners dated 31.05.2019. Perusal of the objections filed by the petitioners, which is placed in the typed set of papers, would show that the petitioner made a detailed objection against the proposal. The Assessing Officer has not even referred to the said objections filed by the petitioners in the impugned orders of assessment. Therefore, it is evident that the impugned orders were passed totally by ignoring the objections raised by the petitioners and thus, it violates the principles of natural justice. Accordingly, this Court is inclined to interfere with the impugned orders only on the above stated reasons.

8. Accordingly, these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment after considering the objections raised by the petitioners and pass orders on merits and in accordance with law, after providing an opportunity of personal hearing also. The whole exercise shall be done by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition are closed.

vsi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (ST),
Poonamallee Assessment Circle,
Varadrajapuram - 602 103.

+2cc to Mr.Karthik Sundaram, Advocate, SR.No.81056 & 81057
+1cc to the Special Govt.Pleader,(Taxes) Vide Sr.No.81495

W.P.Nos.26452 & 26458 of 2019

Kak(25/09/2019)