IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.27117, 27126, 27130 & 27131 of 2019
and
WMP.Nos.26497, 26503, 26507 & 26510 of 2019

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Fuso Glass India Private Limited
Formerly known as Mahaveer Safety Glass Co. P. Ltd.,
Represented by its Director
Ashok Kumar B.Jain
No.91, P.H.Road,
Chennai-600 084. ...Petitioner in all WPs.

-Vs-

The Assistant Commissioner (ST) (FAC)
Kilpauk Assessment Circle
F.50 First Avenue
Anna Nagar East,
Chennai-600 102. ...Respondent in all WPs.

Writ Petitions 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.33661121776/2006-2007, 2007-2008, 2008-2009 & 2009-2010 respectively dated 30.07.2019 and quash the same.

For Petitioner in all W.P.s : Mr.K.A.Parthasarathy

For Respondent in all W.P.s : Mr.V.Haribabu
Addl.Government Pleader (T)

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C O M M O N O R D E R

These writ petitions are filed challenging the individual order of assessment relevant to assessment years 2006-2007 to 2009-2010 dated 30.07.2019.

2. Mr.V.Haribabu, learned Additional Government Pleader (Tax) takes notice for the respondent. By consent of both the parties, these writ petitions are taken up for final disposal at the admission stage itself, since the issue involved in these

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cases can be decided without filing counter pleadings.

3. In respect of relevant assessment years, individual notice of proposal was issued and the petitioner/Assessee also filed their written objections in detail on 23.06.2016. Thereafter, the Assessing Officer issued notice dated 14.05.2019 for personal hearing. The Assessee through their letter dated 24.05.2019 requested the Assessing Officer to postpone personal hearing to another suitable date after 15.06.2019 on the reason that the person incharge, who has been handling the tax matters of the Assessee, is on leave for attending his final Chartered Accountancy examinations. The said communication dated 24.05.2019 was acknowledged at the office of the Assessing Officer. However, the impugned assessment orders were passed by observing that the Assessee did not appear for personal hearing.

4. It is mainly contended by the learned counsel for the petitioner that the Assessing Officer has not considered any of the objections raised by the petitioner for each assessment year and simply, confirmed the proposals without even giving sufficient opportunity to the petitioner for attending personal hearing.

5. On the other hand, the learned Additional Government Pleader appearing for the respondent submitted that the Assessing Officer has informed the petitioner to attend personal hearing on 15.06.2019, however, the Assessee failed to appear and hence, the assessment orders were rightly passed by the Assessing Officer.

6. Perusal of the facts and circumstances of the case on hand and the materials filed before this Court would disclose that the Assessing Officer has passed the impugned orders of assessment, not only by not considering the objections raised by the petitioner in detail for each assessment year and also without giving sufficient opportunity to the petitioner to appear in person, especially, when they requested for postponement of personal hearing after 15.06.2019 to another suitable date. Needless to say that when the request is made for postponement of personal hearing to another date, it is for the Assessing Officer to pass an order on such request and communicate the same, as to whether he accepted the request or rejected the same. In both events, unless the Assessee is informed, certainly, they will not be in a position to know whether their request was considered or rejected. Therefore, every reasonable presumption can be drawn that the Assessee was under the impression that another notice will be issued by fixing a date for personal hearing. In this case, the Assessing Officer, having received the communication dated 24.05.2019 from the Assessee, has not intimated either by fixing the date of

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personal hearing to another date or rejecting the request for postponement of personal hearing to the Assessee. Therefore, I consider that the said action of the Assessing Officer violates the principles of natural justice.

7. The learned Additional Government Pleader, though contended that the Assessing Officer has referred to in the orders of assessment about the objections filed by the Assessee and the deviation proposal submitted to the Deputy Commissioner (ST), Chennai (Central), Chennai, and the communication of the Deputy Commissioner(ST), Chennai (Central), Chennai, partly accepting the deviation proposal and partly rejecting the same, I am not convinced to accept the above observation of the Assessing Officer to construe, as if he has looked into the objections raised by the petitioner and made his individual findings and reasons on those objections before he concludes the assessment.

8. Admittedly, in this case, except by stating that the Company had filed their written objections, the Assessing Officer has not spelt out even a single line of the objections and the reasons and findings on those objections, anywhere in the orders of assessment. Therefore, this Court is of the view that the assessment orders are not passed by considering the objections raised by the petitioner and also by not providing reasonable opportunity of hearing to the petitioner. On both the reasons, this Court is inclined to set aside the impugned orders and remit the matter back to the Assessing Officer for redoing the assessment on merits and in accordance with law.

9. Accordingly, these Writ Petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer for redoing the assessment on merits and in accordance with law, after giving due opportunity of personal hearing to the petitioner. Such exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any view on the merits of the claim made by the petitioner or the observation made by the Assessing Officer in the orders of assessment, as it is for the Assessing Officer to reconsider the whole issue afresh and pass orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

mk

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commercial Tax Officer
Nagapattinam Assessment Circle
Commercial Taxes Buildings
Court Campus, Veliyapalayam
Nagapattinam.

+1cc to Mr.N.Inbarajan, Advocate, SR.No.78238
+1cc to the Special Govt.Pleader, Vide Sr.No.78992

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and
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