IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.30818 of 2019
and
WMP No.30895 of 2019

M/s.Lucky Steels,
Rep. by its Proprietor,
A.Niyas,
No.4, Maduvankarai 3rd Street,
Alandur, Chennai 600 016.

...Petitioner

Vs.

The Assistant Commissioner (ST),
Alandur Assessment Circle,
Chennai 600 016.

...Respondent

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the impugned order passed by the respondent in TIN/33120846108/2016-17 dated 18.09.2019 and quash the same as illegal and unconstitutional.

For Petitioner : Mr.K.M.Malarmannan
For Respondents: Mr.M.Hariharan
Additional Government Pleader (T)

O R D E R

Challenge made in this writ petition is against the order of assessment dated 18.09.2019 relevant to assessment year 2016-2017.

2. Heard both sides.

3. The main grievance of the petitioner is that the impugned assessment order was passed in violation of the principles of natural justice, as the petitioner was not issued with any notice at any point of time before passing the impugned order. A categorical assertion is made in the

affidavit filed in support of the writ petition to that effect. Hence, this Court, at the time of entertaining the writ petition, directed the learned Government Pleader, who took notice for the Assessing Officer, to verify the above objections raised by the petitioner and inform this Court. Accordingly, this matter is listed today for futher hearing.

4. Learned Additional Government Pleader for the respondent, based on instruction, submitted that though the file contains notice of proposal dated 21.05.2018 and personal hearing notice dated 19.03.2019, no acknowledgment is available in the file in proof of service of such notices. Therefore, he fairly submitted that the matter can be remitted back to the Assessing Officer for redoing the assessment by treating the impugned assessment order itself as notice of proposal.

5. Perusal of the impugned order would show that the Assessing Officer has observed that a notice of proposal was issued on 21.05.2018 and personal hearing notice was issued on 19.03.2019. However, it is an admitted fact that there is no proof of service of such notices. When the petitioner has specifically raised the ground that no notice was served on them at any point of time, then it is the bounden duty of the Assessing Officer to prove before this Court about service of such notice. In this case, the Assessing Officer failed to prove the service of notice. Therefore, this Court has to reasonably conclude that no notice was served on the petitioner before passing the impugned order. Therefore, without expressing any view on the merits of the matter, this Court is inclined to remit the matter back to the Assessing Officer for redoing the assessment, after gettiing a reply from the petitioner.

6. Accordingly, this writ petition is allowed and the impugned assessment order is set aside. Consequently, the matter is remitted back to the Assessing Officer for redoing the assessment under the following terms and conditions:

a) The petitioner and the respondent, Assessing Officer shall treat the impugned order itself as notice of proposal;

b) The petitioner shall file a reply to the notice of proposal within a period of two weeks from the date of receipt of a copy of this order along with necessary documents, if any.

c) On receipt of such reply with necessary documents, the Assessing Officer will fix a date of personal hearing and inform the same to the petitioner.

d) On completion of such personal hearing, the Assessing Officer shall pass fresh order of assessment on merits and in accordance with law within a period of six weeks thereafter.

It is made clear that this Court is not expressing any view on the merits of the claim made by the respective parties, as it is for the Assessing Officer to consider the matter afresh and pass fresh order accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vri
To

The Assistant Commissioner (ST),
Alandur Assessment Circle,
Chennai 600 016.

+1cc to Mr.K.M.Malarmannan , Advocate SR.No. 93495
+1 cc to Spl Government Pleader(Taxes) Sr.No. 93707

W.P.No.30818 of 2019

A.SK(14/11/2019)