IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.31554, 31558, 31559, 31561 & 31563 of 2019
and W.M.P.Nos.31747, 31751, 31754, 31757 &
31760 of 2019

M/s.K.R. & Co.
Rep.by its Partner
K.Ammavasai
Kuthiraikalmedu,
Kadappanallur (P.O),
Bhavani Taluk,
Erode District. ..Petitioner

Vs.

1.The Joint Commissioner (ST) (ENF)
Commercial Taxes Buildings,
Pitchards Road,
Salem - 636 007.

2.The Deputy Commissioner (ST) (ENF)
Commercial Taxes Buildings,
Pitchards Road,
Salem - 636 007.

3.The State Tax Officer (ENF)
Group I,
Erode.

4.The Assistant Commissioner (ST)
Bhavani Assessment Circle,
Bhavani. ..Respondents

Prayer in W.P.No.31554 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in TIN.33212943762/2013-14 and quash the order dated 23.09.2019 passed therein and further direct the 3rd respondent to consider the objection filed by the petitioner dated 21.12.2018 before sending the proposal to the 4th respondent, the assessing officer of the petitioner.

Prayer in W.P.No.31558 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in TIN.33212943762/2014-15 and quash the order dated 23.09.2019 passed therein and further direct the 3rd respondent to consider the objection filed by the petitioner dated 21.12.2018 before sending the proposal to the 4th respondent, the assessing officer of the petitioner.

Prayer in W.P.No.31559 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in TIN.33212943762/2015-16 and quash the order dated 23.09.2019 passed therein and further direct the 3rd respondent to consider the objection filed by the petitioner dated 21.12.2018 before sending the proposal to the 4th respondent, the assessing officer of the petitioner.

Prayer in W.P.No.31561 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in TIN.33212943762/2016-17 and quash the order dated 23.09.2019 passed therein and further direct the 3rd respondent to consider the objection filed by the petitioner dated 21.12.2018 before sending the proposal to the 4th respondent, the assessing officer of the petitioner.

Prayer in W.P.No.31563 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in TIN.33212943762/2017-18 (from 01.04.2017 to 30.06.2017) and quash the order dated 23.09.2019 passed therein and further direct the 3rd respondent to consider the objection filed by the petitioner dated 21.12.2018 before sending the proposal to the 4th respondent, the assessing officer of the petitioner.

In all Wps

For Petitioner : Mr.B.Raveendran

For Respondents: Mr.M.Hariharan
Addl.Govt. Pleader (Tax)

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondent and by consent, these writ petitions are taken up for final disposal at the admission stage itself.

2. These writ petitions are filed challenging the orders of assessment dated 23.09.2019 passed in respect of Assessment Years 2013-14 to 2017-18.

3. Heard both sides.

4. The case of the petitioner before this Court is that the Assessing Officer has erroneously proceeded to confirm the proposal without considering the retracted statement filed by the petitioner on 21.12.2018 pursuant to the inspection conducted by the enforcement officials. Therefore, the learned counsel for the petitioner contended that even though the petitioner has not chosen to file objection / reply to the notice of proposal, still the assessing officer is duty bound to consider the objection / retracted statement filed by the petitioner on 21.12.2018 before concluding the assessment. On the other hand, the learned Additional Government Pleader appearing for the respondents submitted that once a notice of proposal is issued, it is the bounden duty of the petitioner to give reply to such proposal. Therefore, he contended that when admittedly the petitioner has not filed any such reply, the Assessing Officer cannot be faulted in concluding the assessment.

4. A perusal of the facts and circumstances would show that the enforcement officials has inspected the premises of the petitioner on 17.12.2018 and a statement was also obtained from the petitioner on 20.12.2018. It is stated that the petitioner, on the very next day sent a communication to all the officials retracting the statement already recorded on 20.12.2018 by making objections on the allegations made against the petitioner. Such retracted statement dated 21.12.2018 is sought to be relied upon by the petitioner to contend that the Assessing Officer ought to have taken note of such retracted statement / objection before concluding the assessment.

5. A perusal of the impugned orders of assessment would show that the Assessing Officer has taken note of the fact that the place of business of the petitioner was inspected by the officers of the enforcement wing and based on the report submitted by such inspecting officers, he has sent the notice of proposal to the assessee and however the assessee has not chosen to file any objection despite sufficient opportunity was given to them. Therefore, the Assessing Officer proceeded to conclude the assessment as the assessee has not filed any objection to the notice of proposal.

6. It is evident that assessment orders were passed only on reason that the petitioner has not filed any objection to the

notice of proposal. As discussed supra, the petitioner seems to have given a retracted statement on 21.12.2018 and such statement seems to have not been taken note of by the Assessing Officer while concluding the assessment.

7. Considering the above stated facts and circumstances, this Court is inclined to give one more opportunity for the petitioner to file their objections to the notice of proposal so that the Assessing Officer can pass a fresh order of assessment, on merits and in accordance with law, after considering such objections. It is also made clear that this Court is not expressing any view on the merits of the matter as it is for the Assessing Officer to consider and decide the issue afresh.

8. Accordingly, all these writ petitions are allowed, the impugned orders of assessment are set aside and the matter is remitted back to the Assessing Officer under the following terms -

(a) The petitioner shall file their objections to the notice of proposal, within a period of two (2) weeks from the date of receipt of a copy of this order;

(b) On receipt of such objections, the Assessing Officer shall afford a personal hearing to the petitioner and thereafter pass fresh orders of assessment, on merits and in accordance with law;

(c) Such exercise shall be done by the Assessing Officer, within a period of eight (8) weeks from the date of reply from the petitioner.

No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

rgr

To

1.The Joint Commissioner (ST) (ENF)
Commercial Taxes Buildings,
Pitchards Road,
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Group I, Erode.

4.The Assistant Commissioner (ST)
Bhavani Assessment Circle,
Bhavani.

+1 CC to Mr.B.Raveendran, Advocate sr 92785
+1 CC to The Spl. Govt. Pleader(T) sr 93229.

W.P.Nos.31554, 31558, 31559, 31561
and 31563 of 2019

RV(CO)
SP(05/12/2019)