IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.32271, 32274, 32275, 32278, 32284, 32287 & 32290 of 2019
and
W.M.P.Nos.32563, 32567, 32568, 32572, 32574, 32578 & 32581 of 2019

Greaves Cotton Limited
Represented by its Authorized Signatory
Rammilan Yadav
No.26-B, Second Floor,
Bharati Vilas
Jawaharlal Nehru Salai
Ekkathuthangal, Guindy Industrial Estate
Chennai-600 032. ... Petitioner in all W.P.s

vs.

The Assistant Commissioner (ST)
No.199, Thambu Chetty Street,
Chennai-600 001. ... Respondent in all W.P.s

Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the impugned order passed by the respondent in TIN.33061242386/2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017 dated 30.08.2019 (recd. on 10.10.2019) and quash the same and further, direct the respondent to redo the assessment in accordance with law after granting sufficient opportunity to the petitioner.

For Petitioner
in all W.P.s : Mr.N.Murali

For Respondent
in all W.P.s : Mr.M.Hariharan
Additional Government Pleader

COMMON ORDER

These writ petitions are filed challenging the orders of assessment dated 30.08.2019 passed under the Tamil Nadu Value Added Tax Act, relevant to the assessment years 2010-2011 to 2016-2017.

2. The case of the petitioner, in short, is as follows:

A common notice of proposal was issued by the previous Assessing Officer on 26.06.2016 in respect of the above assessment years. The petitioner filed a common reply on 11.07.2016. The petitioner also filed the documents in support of their contention on 06.01.2017 and additional documents for the assessment years 2014-2015 and 2015-2016 on 30.10.2018. Thereafter, once again, fresh notices were issued by the present Assessing Officer on 18.12.2018 and 19.12.2018 relevant to the assessment years 2010-2011 to 2015-2016. On receipt of those notices, the petitioner through communication dated 24.12.2018 sought 15 days time to produce the connected records. The said communication though received by the respondent/Assessing Officer, has not been considered and the petitioner was not informed as to whether the said request was considered or rejected. On the other hand, the Assessing Officer passed the impugned orders on 30.08.2019 on the reason that the petitioner has not filed necessary documents in support of their contention.

3. The learned counsel for the petitioner, after reiterating the above contentions, submitted that in the absence of any communication from the Assessing Officer on the request made by the petitioner seeking for time to produce the documents, the petitioner cannot be faulted in not appearing before the Assessing Officer and filing the objections with supportive documents. The learned counsel, in support of the above contention, has relied on the order passed by this Court in W.P.No.5717 of 2017 dated 08.03.2017.

4. The learned Additional Government Pleader, on the other hand, contended that though no written communication was sent to the petitioner on the request made by them on 24.12.2018 seeking for further time, the Assessing Officer passed the impugned orders only after waiting for more than 8 months. Therefore, he contended that the petitioner is not justified in saying that the principles of natural justice is violated.

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

6. It is not in dispute that on receipt of notices of proposal dated 18.12.2018 and 19.12.2018, the petitioner through communication dated 24.12.2018 sought for granting further time. However, the fact remains that the Assessing Officer has not informed the petitioner as to whether the said request was considered or rejected. This Court considered the very same issue in W.P.No.5717 of 2017 dated 08.03.2017, wherein, it was observed at Paragraph No.8 as follows:

> "8.Needless to say that when a request is made by the petitioner seeking for extension of time by way of writing, such request has to be considered and decided

either by accepting or rejecting the same and such decision has to be duly communicated to the assessee by fixing a next date of hearing so as to enable such assessee to be prepared for appearance on that day for completion of the assessment proceedings. In the above referred decision relied on by the learned counsel for the petitioner cited supra, the very same issue was considered and found that the request for extension either granted or rejected should be intimated then and there. In this case, admittedly, no such intimation was given to the petitioner, even assuming that the request of the petitioner was accepted by the Assessing Authority. Needless to say that unless the petitioner is informed of the decision on their request for extension, they cannot be expected to proceed further either this way or that way. Therefore, I find that the assessment order passed without intimating the decision taken on the request for extension of time, is in violation of the principles of natural justice and therefore on that ground alone, the assessment order has to be set aside, without going into any of the merits of the assessment. Accordingly, the writ petition is allowed."

7. In this case, in the impugned orders, though the Assessing Officer has chosen to record the request made by the petitioner seeking for adjournment, has however, not stated any where as to whether the said request was considered or rejected. Therefore, in my considered view, it is better, that one more opportunity can be given to the petitioner to put forth their case before the Assessing Officer so as to enable the Assessing Officer to redo the assessment on merits and in accordance with law. It is also made clear that this Court is not expressing any view on the merits of the claim made by the petitioner touching upon the merits of the assessment.

8. Accordingly, these Writ Petitions are allowed and the impugned orders are set aside subject to the following terms and conditions:

(a) The petitioner shall file their reply along with supportive documents within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such reply with supportive documents, the Assessing Officer shall fix the date of personal hearing and inform the same to the petitioner.

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

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST)
No.199, Thambu Chetty Street,
Chennai-600 001.

+7ccs to M/s.N.Murali, Advocate Sr.96429
+1cc to the Special Government Pleader Sr.97203

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gp[co]
srg 09/12/2019