IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22.01.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.28566, 28571, 28576, 28581 and 28588 of 2018
and
WMP Nos.33317, 33319, 33329,33333, 33337,33339, 33345, 333347, 33351 and 33352 of 2018

Tvl.A.R.P. & Co.,
Rep. by its Partner, R.Murugan,

..Petitioner
in all W.Ps.

Vs.

1.The State Tax Officer,
Omalur Assessment Circle,
Omalur.

2.The Commercial Tax Officer,
(Enforcement),
Namakkal.

..Respondents
in all W.Ps.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records on the files of the 1st respondent in Va.Vi.No.33223245542 of 2010-11, 2012-13, 2013-14, 2014-15 and 2015-16 dated 28.03.2018 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
in all W.Ps.

For Respondents : Mrs.G.Dhana Madhri
Government Advocate (T)
in all W.Ps.

COMMON ORDER

These writ petitions are filed challenging the orders of assessment dated 28.03.2018 passed in respect of assessment years 2010-11, 2012-13, 2013-14, 2014-15 and 2015-16.

2.The main grievance of the petitioner against these impugned assessment orders is that the same were passed without application of mind to the objections raised by the petitioner before the Enforcement Officials. Therefore, it is contended that the Assessing Officer is not justified in observing as if the petitioner did not file any objection at all. The learned counsel for the petitioner, by relying on an order passed by the Division Bench of this Court made in W.A.No.234 to 240 of 2015 dated 16.03.2018, thus contended that even though the petitioner had not filed any reply to the notice of proposal, the objections already filed by them before the Enforcement Officials ought to have been considered by the Assessing Officer, while passing the orders of assessment. Therefore, he contended that non consideration of those objections vitiates entire proceedings.

3. On the other hand, the learned Government Advocate appearing for the respondents contended that when the notice of proposal was issued, the petitioner did not file their reply. Therefore, the Assessing Officer is left with no other option except to conclude the assessment.

4. Heard both sides.

5. It is seen from the impugned orders that the same has resulted out of an inspection conducted by the Enforcement Officials followed by a report submitted by them. It is contended by the petitioner that they have filed their objections before the Enforcement Officials and such objections are available in the file before the respondent. The learned Government Advocate is not disputing the said fact. However, she contended that the petitioner has not filed any reply to the notice of proposal.

6. Perusal of the impugned orders would show that the Assessing Officer has not discussed about the objections raised by the petitioner before the Enforcement Official. In any event, when the notice of proposal is sent, the petitioner, irrespective of the fact that they filed their objections before the Enforcement Officials, ought to have filed their reply to the notice of proposal. In this case, it has not been done so. However, since the Assessing Officer has also not considered the objections raised by the petitioner before the Enforcement Officials, this Court is of the view that the interest of

justice would be met by passing the following order.

7. Accordingly, these writ petitions are allowed and the impugned orders are set aside and they are, in turn, shall be treated as show cause notices. Consequently, the petitioner shall file their objection within a period of two weeks from the date of receipt of a copy of this order. On receipt of such reply and after furnishing an opportunity of 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 objections made by the petitioner or the assessment made by the Assessing Officer, as it is for the Assessing Officer to consider the matter afresh and pass fresh order accordingly. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vri

To

1.The State Tax Officer,
Omalur Assessment Circle,
Omalur.

2.The Commercial Tax Officer,
(Enforcement), Namakkal.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.4688

+1cc to Spl the Government Pleader(Taxes), S.R.No.5252

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KAN(CO)
GSP(13/02/2019)