IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.29572, 29926, 29930, 29931, 29933 & 29936 of 2018
and
W.M.P.Nos.34533, 34933, 34935, 34938, 349242, 34945 of 2018

M/s.Sanmina - SCI India Pvt. Ltd.,
OZ-1, SIPCOT Hi-tech Sez
Oragadam, Sriperumbudur Taluk
Kancheepuram District
Tamil Nadu - 602 105. ...Petitioner in all W.P.s

vs.

The Assistant Commissioner (CT)
The Sales Tax Officer
Oragadam Assessment Circle
No.03/177, 2nd Floor, Bazaar
Hajiyar Nagar, Padappai - 601 301. ...Respondents in all W.P.s

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, calling for the records in the impugned order TIN:339001665135/2014-2015 dated 28/08/2018, TIN:339001665135/2016-2017 dated 28/08/2018 TIN:339001665135/2013-2014 dated 27/08/2018, TIN:339001665135/2015-2016 dated 28/08/2018, TIN:339001665135/2011-2012 dated 27/08/2018, TIN:339001665135/2012-2013 dated 27/08/2018 respectively, on the file of the respondent to quash the same and consequently, direct the respondent to re-do the assessment by granting a time period of three months for personal appearance from the date of issuance of notice for personal hearing.

For Petitioner in all W.P.s :Mr.K.Senguttuvan

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

C O M M O N   O R D E R

These writ petitions are filed challenging the orders of assessment passed in respect of the assessment years 2014-

2015, 2016-2017, 2013-2014, 2015-2016, 2011-2012, 2012-2013 dated 27.08.2018 & 27.08.2018 respectively.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

3. The main grievance of the petitioner in this case is that the impugned orders were passed without affording an opportunity of personal hearing.

4. It is seen that pursuant to the VAT Audit Inspection, the Assessing Officer has issued notices of proposal dated 11.04.2018 and the petitioner filed their replies on 28.05.2018 and 10.07.2018. The contention of the petitioner is that, after receipt of the replies, the Assessing Officer has proceeded to pass the assessment orders without giving an opportunity of personal hearing to the petitioner, especially, when he has also chosen to impose penalty under Section 27(3) of the Tamil Nadu Value Added Tax, Act, 2006.

5. The learned counsel for the petitioner submitted that when a representative from the petitioner went to the office of the respondent to collect the orders of assessment, the said person was served with notice of personal hearing by compelling him to affix his signature. In other words, it is the contention of the learned counsel for the petitioner that no personal hearing notice was issued to the petitioner at any point of time and however, the respondent sought to create records as if such notice was issued.

6. On the other hand, a counter affidavit is filed by the respondent, wherein, it is stated that the petitioner was provided with an opportunity of personal hearing by duly serving copy of the notice dated 09.06.2018 fixing the date of personal hearing on 25.06.2018. Therefore, it is contended by the learned Additional Government Pleader that the petitioner was provided with an opportunity of personal hearing, which they failed to utilize.

7. The question to be decided in these cases is as to whether the petitioner was offered with an opportunity of personal hearing or not. Though counter affidavit filed by the respondent specifically states that the notice of personal hearing dated 09.06.2018 was served on the petitioner's representative on 12.06.2018, no such reference is made in the impugned orders at any place. In fact the impugned orders referred only the notice of proposal and the dealers objections, without making any reference to the notice of personal hearing. Therefore, it is evident that the contention of the petitioner that no such notice was served on them has some force and consequently, the matter needs to be remitted back to the Assessing Officer to give such opportunity and pass fresh orders of assessment.

8. It is not the case of the Revenue that the petitioner is not entitled to personal hearing and on the other hand, in their counter, it is specifically stated that such opportunity was provided to them by issuing a notice to the petitioner's representative. Since this Court finds that no such notice seems to have been issued, as there is no reference to that effect in the impugned orders, this Court is of the view that the matter needs to be remitted back to the Assessing Office for passing fresh orders of assessment.

9. Accordingly, all these Writ Petitions are allowed and the impugned orders are set aside, without expressing any view on the merits of the assessment only on the ground of non-providing of personal hearing. Thus, the matter is remitted back to the Assessing Officer, who in turn shall issue a notice of personal hearing to the petitioner and after concluding such personal hearing, pass fresh orders of assessment on merits and in accordance with law. The whole exercise shall be completed by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (CT)
The Sales Tax Officer
Oragadam Assessment Circle
No.01/177, 2nd Floor, Bazaar
Hajiyar Nagar, Padappai - 601 301.

+1cc to Mr.K.Senguttuvan, Advocate Sr.87274
+1cc to the Special Government Pleader Sr.87871

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29933 & 29936 of 2018

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srg 19/11/2019