IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P. Nos. 32384,32388, 32391, 32393,
32395, 32403 and 32405 of 2018
and
W.M.P. Nos. 37582, 37584, 37586, 37587,
37592, 37598 and 37602 of 2018

W.P.No.32384 of 2018
M/s.Sri Kumaran Super Stores
Represented by its Partner
Mr.S.Veerakumaran
No.42, Kamaraj Road
Tiruppur. ... Petitioner in all WPs

Vs.

1.The Commercial Tax Officer
Central-I Circle, Tiruppur.

2.The Commercial Tax Officer
Enforcement Group-II
Tiruppur.

3.The Assistant Commissioner (CT)
Tiruppur Main I Assessment Circle
Tiruppur.

4.The Sub Registrar
Office of the Joint Registrar
Tiruppur. ... Respondents in all WPs

Common Prayer :: Petitions filed under Article 226 of the Constitution of India, to issue Writs of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent in TIN : 33472404754/2009-10 2010-2011, 2011-2012,2012-2013,2013-2014,2014-2015 and 2015-2016 respectively dated 14.12.2015 and to quash the same as passed without granting reasonable opportunity to the petitioner and to direct the first respondent to pass a fresh assessment order in accordance with law in an independent manner without being influenced by the proposal received from the second respondent.

For Petitioner : Mr.P.Rajkumar [in all WPs]

For Respondents : Ms.G.Dhana Madhiri [in all WPs]
Government Advocate (Taxes)

O R D E R

These writ petitions are filed challenging the orders of assessment dated 14.12.2015 passed in respect of the assessment years 2009-10 to 2015-16.

2.The grievances of the petitioner before this Court as against the impugned orders is that the same was passed without affording sufficient opportunity to the petitioner to place their objection, apart from the fact that the very orders passed on 14.12.2015 were not at all served on the petitioner at any point of time. Therefore, it is contended that the petitioner is reasonably prevented from challenging the said assessment orders within the time stipulated under the statute. On the other hand, it is contended by the learned Government Advocate that the petitioner having received the notice of proposal has not filed their reply and therefore, the assessing officer is left with no other option except to pass the impugned assessment orders.

3. Heard both sides.

4. It is seen that the impugned orders of assessment were passed consequent to the field audit conducted in the place of business of the petitioner by the Enforcement Wing Officials. It is further seen that based on the defects noticed by the Enforcement Wing Officials, the petitioner was issued with notice of proposal on 15.10.2015. It is the case of the petitioner that on receipt of such notice the petitioner sought certain details and particulars as to how the defects were arrived at by the Enforcement Wing Officials and such details and particulars were not furnished to the petitioner. Therefore, it is contended that the petitioner was not in a position to make an effective reply to the notice of proposal dated 15.10.2015.

5. Perusal of the impugned orders would show that they were passed on 14.12.2015 based on the report submitted by the Enforcement Wing Officials. No doubt, the petitioner has not furnished any reply. However, as it is contended that the said orders of assessment were never communicated to the petitioner, it is for the respondents /Assessing officer to prove that the same was

communicated to the petitioner in the manner known to law. Therefore, when this matter was taken up on 11.12.2018, this Court after finding that there is some confusion with regard to the service of the impugned orders of assessment as well as some payment said to have been made by the petitioner, directed the respondents to file a counter affidavit. Accordingly, this matter is listed for further hearing.

6. The learned Government Advocate based on the instructions submitted that the impugned orders were sent by ordinary post to the petitioner and not by registered post. Rule 19 of the Tamil Nadu Value Added Tax Rules 2007, which deals with services of notices, summons or order would show that the same should be served by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative or if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family or by sending it to the address of the dealer by registered post or if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence. Electronic mode service is also permissible under Rule 19(1)(e) in pursuant to amendment made through G.O. Ms. No. 18 dated 29.01.2016. Therefore, it is evident that the claim of service of the impugned orders through ordinary post as stated by the respondents can not be accepted as valid since service mode is not contemplated under Rule 19. Therefore, in effect it has to be construed that the said impugned orders were never served on the petitioner. Under such circumstances, this Court has to hold that the petitioner is denied of the reasonable opportunity to challenge the impugned orders then and there. In any event, as it is contended that the petitioner is requested for furnishing certain details and particulars which were not furnished by the assessing officer before passing the impugned orders, this Court is of the view that interest of justice would be met if the petitioner is given one more opportunity to place all the facts and materials before the assessing officer, so that the assessment can be made afresh on merits and in accordance with law.

7. Accordingly, these writ petitions are allowed and the impugned orders of assessment are set aside and the matter is remitted back before the assessing officer on the following terms and conditions:

(a) the petitioner and the assessing officer shall treat the impugned orders as notice of proposal;

(b) the petitioner shall give reply to the notice within a period of two weeks from the date of receipt of a copy of this order with all supporting documents;

(c) On receipt of such reply, the assessing officer shall fix the date of personal hearing and conduct the same;

(d) 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.

(e) Since the impugned orders of assessment are set aside and the matters are remitted back to the assessing officer, the attachments made in pursuant to the impugned assessment orders shall be lifted by the assessing officer forthwith.

No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

maya/sni

To

1.The Commercial Tax Officer
Central-I Circle, Tiruppur.

2.The Commercial Tax Officer
Enforcement Group-II, Tiruppur.

3.The Assistant Commissioner (CT)
Tiruppur Main I Assessment Circle
Tiruppur.

4.The Sub Registrar
Office of the Joint Registrar
Tiruppur.

+1cc to Mr.P.Rajkumar , Advocate SR.No. 4643
+1 CC TO GOVERNMENT PLEADER SR.NO. 5253

W.P. Nos. 32384,32388, 32391, 32393, 32395, 32403 and 32405 of 2018

A.SK(28/01/2019)