IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.34196 of 2018
and
W.M.P.No.39728 of 2018

M/s. Arekema Peroxides India Private Limited.,
Represented by its Director: Suresh Ramachandran
1st Floor, Balmer Lawrie House,
628 Anna Salai, Teynampet,
Chennai 600 018. ...Petitioner

vs.

1. The Assistant Commissioner (CT),
   Mylapore Assessment Circle, Assessing Authority,
   Station No 46, Greenways Road,
   Chennai 600 028.

2. The Commissioner of Commercial Taxes,
   "Ezhilagam",
   Chennai 600 005. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to Assessment Order dated 28.11.2018 in Assessment Number & year CST/581043/2016-2017 passed by the first respondent and quash the same and remit the matter back to the respondents to pass a fresh assessment order after affording the petitioner an opportunity of personal hearing.

For Petitioner : Mr.Akbar Row

For Respondents: Mr.M.Hariharan
Additional Government Pleader (Tax)

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondents. By consent of the parties, this main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 28.11.2018 relevant to assessment year 2016-2017.

3. Heard both sides.

4. The main grievance of the petitioner expressed before this Court is that the Assessing Officer has passed the impugned order without affording sufficient opportunity to the petitioner to produce the relevant documents inpite of their request made in writing to that effect. Therefore, it is contended that the impugned order was passed in violation of principles of natural justice. In support of such contention, the learned counsel appearing for the petitioner relied on a decision of this Court made in the case of Tvl Vikranth Construction Vs Deputy Commercial Tax Officer, Cuddalore reported in 2017 (7) GSTL 298 (Mad).

5. The learned Additional Government Pleader appearing for the respondents, however, contended that the impugned order was passed only after issuing the notice of proposal and granting sufficient time for the petitioner, which they failed to utilise.

6. It is true that the impugned order of assessment was passed in pursuant to issuance of notice of proposal dated 28.08.2018. It is stated that the petitioner through their letter dated 19.09.2018 sought time till 31.10.2018 to furnish all the relevant details for completion of assessment and it is further stated that in pursuant to such communication, the petitioner has also produced certain documents and relevant forms in part, since they were not in a position to collect the entire forms within the time stipulated. Therefore, it is seen that the petitioner has sent another communication on 29.10.2018 requesting the Assessing Officer to grant time till 30.11.2018 to furnish the rest of the details for completion of assessment. Though such letter was received by the Assessing Officer, the assessment was completed on 28.11.2018 even before the expiry of time sought for by the petitioner. It is also seen that the Assessing Officer has not informed the petitioner as to whether the request for grant of time till 30.11.2018, was either accepted or rejected. Therefore, there is a reasonable presumption on the part of the assessee to wait for a communication from the Assessing Officer in respect of their request for extension of time. If the Assessing Officer has passed the assessment order without informing the assessee as to whether the request for time is granted or rejected, it has to be construed that the assessment made thereafter, is in violation of principles of natural justice. The very same issue was considered by this Court in the case of Tvl Vikranth Construction Vs Deputy Commercial Tax Officer, Cuddalore

reported in 2017 (7) GSTL 298 (Mad), wherein, at paragraph Nos. 7 & 8, it has been observed as follows:

> 7. It is seen that in pursuant to a notice issued under Section 22(4) of the said Act dated 14-10-2016, the petitioner appeared before the respondent on the date so fixed and had given a request for granting 20 days time for producing certain supporting documents. Such request made by the petitioner on 7-11-2016 is admitted by the respondent in the assessment order itself. However, it is stated therein that the petitioner has not produced the supporting documents within 20 days.
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> 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. The impugned order of assessment is set aside and the matter is remitted back to the respondent for passing fresh order of assessment after giving due opportunity of hearing to the petitioner. The petitioner should cooperate with the assessment proceedings without dragging the matter by way of filing applications one after

another seeking for extension without there being any justifiable cause. The respondent shall intimate the next date of hearing to the petitioner. On receipt of such notice, the petitioner should appear with all necessary documents and allow the Assessing Officer to complete the assessment proceedings. Entire exercise shall be done by the respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petitions are closed.

7. Considering the above stated facts and circumstances and the order passed by this Court in similar case as extracted supra, this Court is of the view that the petitioner must be given one more opportunity so as to enable them to file all the necessary documents and forms before the Assessing Officer for completing the assessment.

8. Accordingly, without expressing any view on the merits of the assessment order, impugned in this writ petition, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment as per the following terms and conditions:

a) The petitioner shall furnish all the relevant documents/forms within a period of two weeks from the date of receipt of a copy of this order.

b) On receipt of such documents/forms, the Assessing Officer shall inform the date of personal hearing 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 four weeks thereafter.

No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sni/mk

To

1. The Assistant Commissioner (CT),
    Mylapore Assessment Circle, Assessing Authority,
    Station No 46, Greenways Road,
    Chennai 600 028.

2. The Commissioner of Commercial Taxes,
    “Ezhilagam”,
    Chennai 600 005.

+2cc to M/S.Akbar Row, Advocate Sr.247
+1cc to the Government Pleader Sr.1135

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