(2017) 03 MAD CK 0020

In the Madras High Court

Case No : 6868 to 6874 of 2017 And W M P Nos 7447 to 7453 of 2017

M/s. Albis Constructions Pvt. Ltd. — APPELLANT

Vs

The Assistant Commissioner (CT)(FAC) Egmore Assessment Circle — RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:

Citation : (2017) 03 MAD CK 0020

Hon'ble Judges : K.Ravichandrabaabu

Bench : SINGLE BENCH

Advocate : K.Ravichandrabaabu

Final Decision : Allowed

Judgement

1. Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) takes notice for the respondent and by consent of parties, the main

writ petitions are taken up for final disposal at the admission stage itself, as the issue involved in these cases lies in a narrow compass.

2. These petitions are filed challenging the assessment orders in respect of assessment years 2007-08 to 2013-14. The petitioner is a registered

dealer under the provisions of Tamil Nadu Value Added Tax Act, 2006 and also under the provisions of Central Sales Tax Act, 1956.

3. The main grievance of the petitioner in these writ petitions is that the respondent has passed the impugned orders of assessment without

considering the material supplied by the petitioner along with their reply to the notice. It is their further contention that had there been an

opportunity of personal hearing, the petitioner would have satisfied the respondent by explaining in detail, with the supportive documentary evidences as to how the proposals are not correct.

4. The learned counsel for the petitioner pointed out that though the pre-assessment notices and revised notices sent on 03.03.2015 and

09.12.2016 respectively, in respect of each assessment years indicated as though the petitioner is entitled for personal hearing, the respondent has

not afforded such hearing to the petitioner by indicating the date of such hearing, by issuing further notice to the petitioner to that effect. Therefore,

he contended that without any intimation to the petitioner by fixing the date of personal hearing, the petitioner cannot be expected to appear before

the respondent for availing the opportunity of personal hearing.

5. The learned counsel for the petitioner further submitted that as per the Circular No.7/2014 dated 03.02.2014, issued by the Principal Secretary/

Commissioner of Commercial Taxes, Chepauk, Chennai - 5, the respondent is duty bound to afford a personal hearing to the petitioner, whether

the petitioner has asked for the same or not. Therefore, he submitted that the impugned orders are liable to be set aside solely, on the ground of

violation of principles of natural justice.

6. The Additional Government Pleader (Taxes) appearing for the respondent submitted that the petitioner is not justified in contending that they

were not afforded an opportunity of personal hearing especially, when the pre-assessment notice and the revised notice has specifically indicated

that the petitioner is afforded with an opportunity of personal hearing, if they desire to have the same. Therefore, he contended that when the

petitioner has not opted to appear for personal hearing, they cannot contend before this Court, as though the principles of natural justice is violated.

7. Heard both sides.

8. The petitioner is aggrieved against the orders of assessment passed in pursuant to the pre-assessment notices and revised notices dated

03.03.2015 and 09.12.2016. Perusal of the said notices would show that the respondent has called upon the petitioner to file their objections

within fifteen days of receipt of such notices, also by indicating that the petitioner is further afforded with an opportunity of being personally heard,

if they desire, within the above allowed notice time. Though such notice was issued to the petitioner, the fact remains that no further notice was

issued to the petitioner indicating as to the date of such personal hearing, even though the petitioner has furnished their objections to the said

notices within the time stipulated therein.

9. At this juncture, it is useful to refer to the Circular issued by the office of the Principal Secretary/ Commissioner of Commercial Taxes, Chepauk,

Chennai - 5 in Circular No.7/2014, wherein, it is observed as follows:

a) Passing of Orders:

Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the

date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the

following process.

i) After issue of notice calling for the objections, if any further time is requested by the dealer within a period of fifteen days, it shall be

examined and reply to be given to the dealer regarding granting of time or not as the case may be only if, there exists a genuine

reason.

ii) Objections filed by the dealer on the pre assessment/revision notices shall be examined in each and every issue meticulously and

speaking order shall be passed addressing the objections raised, in short, the speaking order which is complete shall be passed.

iii) As the provision in the TNVAT Act stipulates the conditions of granting of personal hearing, it may be intimated in the notice and it

shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not.

10. Going by the above Circular issued by the Department and considering the fact that the pre-assessment notices and revised notices suggested,

as though the petitioner is entitled for a personal hearing, the question that is to be gone into and decided in this case is as to whether the petitioner

was really afforded such opportunity. As I pointed out earlier, the respondent has not intimated the petitioner about the date of personal hearing in

pursuant to the objections filed by them. When such being the factual position, the only conclusion that can be arrived is that the respondent though

stated that an opportunity of personal hearing would be given to the petitioner, has, infact, not afforded such opportunity to the petitioner by not informing the date of such hearing. Therefore, it is evident that the petitioner was not given such personal hearing and consequently, as rightly

argued by the learned counsel for the petitioner, the impugned orders of assessment suffers on the ground of violation of natural justice.

11. Accordingly, this Court is satisfied to set aside the order of assessment only on the ground of violation of principles of natural justice, without

going into any of the merits of the contentions raised by the parties on the orders of assessment. Consequently, the writ petitions are allowed and

the impugned orders of assessment are set aside and the matter is remitted back to the respondent for passing fresh orders of assessment, after

affording opportunity of personal hearing to the petitioner by indicating the exact date of such hearing. After hearing the petitioner and considering

all the aspects, the respondent shall pass fresh orders of assessment on its own merits and in accordance with law, within a period of eight weeks

from the date of receipt of a copy of this order.

12. The writ petitions are allowed as indicated above. No costs.

Consequently, the connected miscellaneous petitions are also closed.