

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.6882 to 6885 of 2017
and
W.M.P.Nos.7469 & 7472 of 2017

M/s.Srishas Foundation
Rep. by its Proprietrix Smt.S.Shanthi
No.72 & 73, Sriuvallur High Road,
Perambur, Chennai-600 011.

...Petitioner
in all the Writ Petitions

Vs.

The Commercial Tax Officer
Perambur Assessment Circle
No.15 & 16, Malligai Avenue,
Kolathur, Chennai-600 099.

... Respondent
in all the Writ Petitions

Prayer in WP.Nos.6882 to 6884 of 2017

Writ petition Nos.6882 to 6884 of 2017 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the respondent in TIN:33831044616/2011-12, 2012-13, 2013-14, dated 01.03.2017 and dated 02.03.2017 and quash the same as illegal, without jurisdiction and authority of law, against the principles of natural justice.

Prayer in W.P.Nos.6884 and Writ petition Nos.6885 of 2017 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the respondent in TIN:33831044616/2014-15, dated 20.09.2016 and consequential order in TIN:33831044616/2014-15 dated 01.03.2017 and quash the same as illegal, without jurisdiction and authority of law, against the principles of natural justice.

For Petitioner: Mr.T.Pramodkumar Chopda
For Respondent : Mr. S.Kanmani Annamalai
Additional Government Pleader (Tax)

C O M M O N O R D E R

All these writ petitions are filed, challenging the orders of assessment, in respect of assessment years 2011-2012 to 2014-2015. In WP.No.6885 of 2017, apart from the original order of assessment, the petitioner also challenged the revised order of assessment.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader (Tax) appearing for the respondent.

3. The main grievance in this writ petition is that the impugned orders are passed in violation of principles of natural justice. The specific case of the petitioner is that even though the petitioner had appeared for personal hearing held on 09.11.2016 and produced the original purchase bills, bank payment details etc., the Assessing Officer, while passing the order of assessment has observed, as if, the petitioner did not appear for personal hearing, in spite of an opportunity having been given to them.

4. The learned counsel appearing for the petitioner invited the Court's attention to the endorsement made by the Assessing Officer in the acknowledgment of the communication dated 09.11.2016, indicating that the petitioner has given a reply letter at the time of personal hearing for the assessment years 2014-2015 and 2011-2012 to 2013-2014 along with the original purchase bills, bank payment details etc.,

5. Therefore, the learned counsel appearing for the petitioner submitted that the assessment orders passed without verification of the materials filed by the petitioner at the time of personal hearing on 09.11.2016, is in violation of principles of natural justice, apart from exhibiting non-application of mind. He further pointed out that the assessment orders were passed based on web report and also on the reason that the registration certificates of the dealers were cancelled later, with retrospective effect. Therefore, it is submitted by the learned counsel appearing for the petitioner that as the issues involved in this case are covered by the decisions of this Court, the Assessing Officer is not justified in passing the orders of assessment.

6. Mr.Kanmani Annamalai, learned Additional Government Pleader (Tax) appearing for the respondent, based on instructions, submitted that it is true that the petitioner has appeared on 09.11.2016 for personal hearing and also filed a

reply letter by enclosing the details as stated supra. Therefore, he fairly submitted that the Assessing Officer has passed the orders of assessment without discussing on the materials supplied by the petitioner along with the reply furnished on 09.11.2016.

7. Considering the above said facts and circumstances and considering the fact that it is admitted by the respondent that the petitioner has filed the reply letter on 09.11.2016, at the time of personal hearing and also by enclosing certain materials as stated supra, this Court is of the view that the Assessing Officer is not justified in passing the orders of assessment without considering the materials placed. Therefore it amply proves that the assessment orders have been passed as an outcome of non-application of mind. Needless to say that when the materials are placed before the authorities, the same have to be considered and findings have to be rendered on such materials, while passing the orders of assessment. In the absence of any consideration on those materials, the orders of assessment cannot be sustained.

8. Accordingly, these writ petitions are allowed and the impugned orders of assessment in all the cases as well as revision assessment in respect of WP.No.6885 of 2017 are set aside. Consequently, the matters are remitted back to the Assessing Officer to re-do the assessment once again, after giving an opportunity of personal hearing to the petitioner. Needless to say that it is open to the petitioner to raise all the points including the points regarding mismatch issue as well as the issue regarding cancellation of the registration certificates with retrospective effect. The Assessing Officer shall complete the entire exercise 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/-
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Assistant Registrar

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Sub Assistant Registrar

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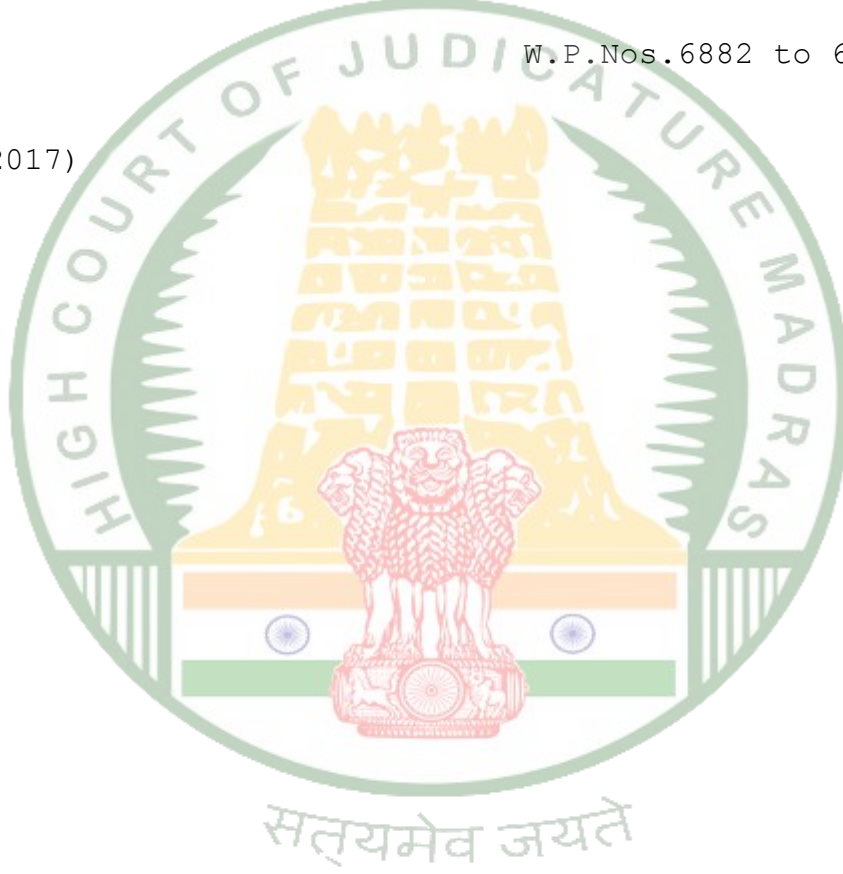
To

The Commercial Tax Officer
Perambur Assessment Circle
No.15 & 16, Malligai Avenue,
Kolathur, Chennai-600 099.

+1cc to Mr.Pramod Kumar, Advocate, S.R.No.19185
+1cc to the Government Pleader, S.R.No.19459

W.P.Nos.6882 to 6885 of 2017

GMI (CO)
RS (19/04/2017)



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