IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2015

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.Nos.28048 and 28049 of 2015
and M.P.No.1 of 2015

Wonjin Autoparts India Pvt. Ltd.
Rep. by its Manager - Finance
J.Maria Jeya Balan
Plot No.A1k, CMDA Industrial Complex
Maraimalai Nagar-603 209. .. Petitioner in both W.Ps.

Vs.

Assistant Commissioner (CT)
Chengalpet Assessment Circle
No.15-B, 1st floor, 1st main road
Anna nagar, Chengalpattu-603 001. .. Respondent in both W.Ps.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed in CST 845866/2013-2014 dated 28.07.2015, 26.02.2015 and quash the same as the impugned proceedings are arbitrary and in violation of principles of natural justice and further direct the respondent to re-do the assessment in accordance with the law.

For Petitioner : Mr.N.Murali

For Respondent : Mr.S.Manoharasundaram
Addl. Govt. Pleader

COMMON ORDER

The writ petitions have been filed to call for the impugned proceedings of the respondent passed in CST 845866/2013-2014 dated 26.02.2015 and 28.07.2015 and quash the same as the impugned proceedings are arbitrary and in violation of principles of natural justice and further direct the respondent to re-do the assessment in accordance with the law.

2. The respondent has passed the impugned order on 26.02.2015 in respect of CST Act for the assessment year 2013-2014. The petitioner being a dealer in Automobile Components filed returns including the total and taxable turnover for the assessment year 2013-2014. The necessary 'C' forms claiming 2% levy also produced. They also claimed exemption for export sales. But in the assessment order, it is observed that the dealers had not filed any declaration for the above transactions in support of their claims as well as for exemption. Hence, by invoking Rule 12(7) of the CST Act, 1956, the total and taxable turnover of the dealers for the year 2013-2014 is determined at 14.5% and the impugned order has been passed. Challenging the same, the petitioner is before this Court.

3. According to the learned counsel for the petitioner, though the authority received requisite 'C' forms, the same were not considered. Further without furnishing any details as well as issuing pre-assessment notice, the impugned orders came to be passed and thereby the respondent violated the principles of natural justice. The learned counsel also submitted that an opportunity must be given to the petitioner before passing the impugned orders. He would further contend that the authority without giving effect and consideration of the documentary evidence filed by the petitioner, passed the impugned order dated 26.02.2015. Further subsequent to passing of the impugned order dated 26.02.2015, the petitioner has filed an application under Section 84 of the Tamil Nadu Value Added Tax Act for rectification of certain errors apparent on the face of the record of the assessment order. The respondent considered 'C' forms, granted relief but without considering the petitioner's export claim, rejected the same and passed the impugned order dated 28.07.2015. These two impugned orders are challenged before this court.

4. The learned Additional Government Pleader on instructions submitted that before passing the impugned order, no pre-assessment notice was issued to the petitioner. The above submission made by the learned Additional Government Pleader is recorded.

5. Admittedly no pre-assessment notice was issued before passing the original assessment order dated 26.02.2015 and hence, this Court is inclined to set aside the same. Once the original order dated 26.02.2015 goes, there is no impediment for quashing the subsequent order dated 28.07.2015, which is consequential.



6. Accordingly, both the orders dated 26.02.2015 and 28.07.2015 passed by the respondent are quashed and the matter is remanded back to the respondent for fresh consideration. The respondent is directed to issue fresh notice furnishing all the details with regard to the revision of total and taxable turnover for the year 2013-2014 within a period of two weeks from the date of receipt of a copy of this order and on receipt of such notice, the petitioner is directed to file necessary forms and objections thereof along with the documentary evidence relating to export sales. On such filing, the respondent is

directed to consider and pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter, after affording due opportunity of personal hearing to the petitioner.

7. With the above direction, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Kj

Sd/-
Assistant Registrar (Judicial)

/True Copy/

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Chengalpet Assessment Circle
No.15-B, 1st floor, 1st main road
Anna nagar, Chengalpattu-603 001.

+2 Copies in MR.N.Murali, Advocate in SR.NO.51752

+1 C.C. To The Special Government Pleader (Taxes), in SR.NO.51445

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KGK(CO)
sd : 16/10/2015