IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.06.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14759 of 2016
&
W.M.P.No.12892 of 2016

M/s. Gamesa Renewable Pvt Ltd
(Formerly known as Gamesa Wind Turbine Pvt.Ltd)
334, Future IT Park, 'B' Block,
8, Old Mahabalipuram Road,
Chennai 119. ... Petitioner

Vs

The Principal Commissioner of Service Tax
Service Tax I Commissionerate
Newry Towers, No.2054-I
II Avenue Anna nagar
Chennai 600 040. ... Respondent

PRAYER : Petition filed under Article 226 of The Constitution of India praying for issuance of writ of certiorarified mandamus to call for the records of the Respondent culminating in the passing of the Order in Original No. CHN-SVT AX-001-COM-105/2015-16 Dated 23.03.2016 and quash the same and consequently direct the Respondent to consider the appeal afresh after affording adequate opportunities of hearing including production marking of documents in the manner known to law.

For Petitioner : Mr.R.Muthukumarasamy
Senior Counsel
assisted by Mrs.V.Pushpa

For Respondent : Mr.A.P.Srinivas
Standing Counsel

O R D E R

Heard Mr.R.Muthukumarasamy, learned Senior Counsel instructed by Mrs.V.Pushpa, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel appearing on behalf of the respondent and with the consent of learned counsel appearing on either side, the writ petition taken up for final disposal.

2.The challenge in this Writ Petition is to an Order-in-Original dated 23.03.2015, passed by the respondent, demanding Service tax and imposing penalty on the petitioner on various grounds.

3.The only ground on which the impugned order has been challenged before this Court by way of this Writ Petition is by contending that there has been violation of principles of natural justice, inasmuch as the petitioner has not been given adequate opportunity to putforth their case by way of personal hearing.

4.When the case came up for hearing on 10.06.2016, this Court directed the respondent to file counter only with regard to the aspect as to whether the petitioner had been given an effective hearing, as requested by them. Elaborate counter affidavit has been filed by the Assistant Commissioner (Legal) of the respondent Department. Since, this Court is examining the correctness of the impugned order only on the ground as to whether principles of natural justice has been followed or not, the factual averments stated in the affidavit filed in support of the Writ Petition or as set out in the counter affidavit have not been taken into consideration.

5.After hearing the learned counsel for the parties and perusing the materials placed on record, this Court is of the view that in the instant case, petitioner has not been afforded adequate opportunity to putforth their submissions and there has been violation of principles of natural justice. This Court proceeds to substantiate this conclusion with the following reasons:

5.1 A show cause notice was issued to the petitioner on 16.03.2015, calling upon the petitioner to show cause as to why service tax on the value of Infrastructure Development Charges, should not be demanded; why the CENVAT Credit should not be disallowed and recovery under Rule 14 of the CENVAT Credit Rules 2004, read with section 73 (1) of the Finance Act, 1994, and why Service Tax should not be demanded on the value of import services, apart from other things including as to why penalty should not be imposed.

5.2 The petitioner's authorised representative submitted a letter on 15.4.2015, requesting one month time to submit their reply along with supporting documents. The said request was received by the Superintendent (Adjudication), Service Tax Commissioner-I on 16.04.2015. Once again another request was made by the petitioner on 18.05.2015, for grant of fifteen days extension of time. That representation was received by the Inspector (Adjudication), Service Tax Commissioner-I on 19.05.2015. Within the extended time, the petitioner submitted their reply on 02.06.2015. On receipt of the reply, the respondent by proceedings dated 25.01.2016, fixed the hearing on 04.02.2016. On 04.02.2016, the counsel for the petitioner appeared before the respondent and referred to the reply dated 04.06.2015 and requested further time to make their written submissions as well as the compendium of the case. The said request was recorded by the respondent and the matter stood adjourned as requested by the petitioner to 19.02.2016. On 19.02.2016, the petitioner submitted a letter to the respondent stating that their counsel had met a minor accident and unable to attend the hearing and requested for re-posting the case to first week of March 2016.

5.3 It is not in dispute that the respondent did not give any reply to the said request made by the petitioner. Nevertheless, the petitioner submitted a representation on 01.03.2016, furnishing certain details said to be the break-up details and a specific request was made to the respondent that an opportunity of personal hearing may be granted to explain the facts and the basis for their calculation. It is also not in dispute that the said representation dated 01.03.2016, was received by the respondent, nevertheless, neither they rejected the request nor considered the same and afforded an opportunity of personal hearing, but, proceed to pass the impugned order on 23.03.2016.

5.4 The underlying object of affording an opportunity of personal hearing before passing the order, is to ensure that the principles of natural justice are complied with and the assessee has an opportunity to rebut the presumption drawn against him. In Taxation Statute, though certain Statutes do not specifically provide for an opportunity of personal hearing, Courts have rendered decisions and stated that when complicated questions of facts are involved, it would be in fitness of things for the Authority to afford an opportunity of personal hearing. The said decision has been rendered with a view to clarify the facts and also in a way to help the Adjudicating Officer to give a proper and just conclusion at the earliest. Therefore, had the respondent afforded an opportunity to the petitioner as sought for in their representation dated 01.03.2016, the petitioner would not have approached this Court.

6. In the light of the above, this Court is inclined to interfere with the impugned order, on the ground that it is in violation of principles of natural justice.

7. Accordingly, the Writ Petition is allowed and the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner as well as to their Counsel, consider their submissions and the

documents produced and thereafter take a decision on merits and in accordance with law, uninfluenced by any of the observation in the order dated 23.03.2016. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Principal Commissioner of Service Tax
Service Tax I Commissionerate
Newry Towers, No.2054-I
II Avenue, Anna nagar
Chennai 600 040.

+1cc to Mrs.V.Pushpa, Advocate, S.R.No.35693
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.35904

W.P.No.14759 of 2016

NRJK(CO)
CA(14/07/2016)