IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.32613 of 2005 &

WMP No.28261 of 2016

M/s Larsen & Toubro Limited
rep. by its Manager
Chennai Regional Office, Chennai. .. Petitioner

..Vs..

The Deputy Commissioner (CT)-II
LTU, Marshall Road, Chennai -8. .. Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the impugned assessment order in TIN 33800620015/2014-15 dated 22.08.2016 from the files of the respondent herein and quash the same.

For Petitioner : Mrs.Aparna Nandakumar

For Respondent : Mr.S.Kanmani Annamalai
Addl.Govt. Pleader

O R D E R

Heard Mrs.Aparna Nandakumar, learned Counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice for the respondent. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for hearing.

2.The petitioner who is the registered dealer under the provisions of the Tamil Nadu Value Added Tax, 2006 [TNVAT Act] and Central Sales Tax Act, 1956 [CST Act], has come forward with this Writ Petition, challenging the impugned assessment order passed by the respondent dated 22.08.2015, for the assessment year 2014-15.

3.On a perusal of the impugned order, this Court is shocked to find that the dealer who falls within the jurisdiction of a 'large tax payers unit' has been dealt with in an arbitrary and unreasonable manner in the matter of production of C-Forms.

4.The Hon'ble Division Bench of this Court in the case of STATE OF TAMIL NADU V. ARULMURUGAN AND CO. [(1982) 51 STC 382 (Mad)], has held that the C-Forms and other forms deserve to be received by the authority and even the Appellate authority is entitled to receive the same. Thus, the underlying legal principle is that on account of belated production of C-Forms, the benefit should not be denied to the dealer.

5.It is not known as to why the respondent has taken such a hurried action in the matter. The first notice issued by the respondent was on 05.07.2016, for which the petitioner had submitted a reply on 25.7.2016, among other things, by stating that all their clients are registered with the Department and are contractually bound to issue C-Forms and they have been advised that non-submission of C-Forms would not change the nature of transaction from Section 8(1) of the CST Act to otherwise and the ITC amount and the total output figures adopted in the notice does not tally with their workings. Therefore, the petitioner requested to drop the proposal of reversing the ITC. Further, the petitioner submitted that if any further data or documents are required for substantiating their claim, they requested for personal hearing to be afforded, before final order was passed. The said reply was received by the Office of the respondent on 25.07.2016 and by the impugned order, solely referring to the reply, the respondent without affording an opportunity of personal hearing, has confirmed the proposal.

6.The manner in which the respondent has confirmed the proposal does not satisfy the legal requirements. In fact in respect of revision of assessment under the CST Act, the petitioner has filed an appeal before the Joint Commissioner (CT) Appeal, Chennai, and the Appeal is pending.

7.Considering the manner in which the impugned order has been passed, this Court is of the view that the assessment should be redone and the petitioner should be afforded an opportunity of personal hearing, moreso, when the petitioner would now take a stand that they have received C-Forms from their clients who are all registered dealers. In the impugned order, the respondent has not disputed the fact that the petitioner's clients are registered dealers in other States. Further, the petitioner has questioned the formula which has been adopted for reversal of the Input Tax Credit. Adequate opportunity having not been granted to the petitioner, the impugned order is held to be in violation of principles of natural justice.

8.Accordingly, the Writ Petition is allowed,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, after receiving the C-Forms that may be produced by the petitioner and redo the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rpa

To

The Deputy Commissioner (CT)-II
LTU, Marshall Road,
Chennai -8.

+1 CC to Mr. Aparna Nandakumar, Advocate Sr.No.52880
+1 CC to The Spl Government Pleader (Taxes) Sr.No.53069

W.P.No.32613 of 2016

ALA (CO)
MD : 06/10/2016