IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.41643 of 2016
&
WMP.No.35630 of 2016

M/s.Wabco India Ltd., rep.by
its General Manager - Legal,
Chennai-58. ... Petitioner

Vs

The Assistant Commissioner (CT),
Ambattur Assessment Circle,
Chennai-58. ... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in the impugned order in CST/871408/2010-11 dated 14.11.2016 and quash the same as it is against the principles of natural justice and violative of Article 286(1)(b) of The Constitution.

For Petitioner : Ms.Radhika Chandra Sekhar

For Respondent : Mr.K.Venkatesh,
Government Advocate

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956, is before this Court challenging the order of assessment dated 14.11.2016.

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3. Under normal circumstances, this Court will not entertain a writ petition against the order of assessment, since the Statute provides an effective alternate remedy of appeal before the Appellate Deputy Commissioner (CT). However, in the instant case, it is seen that the first revision notice dated 27.1.2015 was issued for the assessment year 2010-11 proposing to reverse the input tax credit for certain reasons. The petitioner, by letter dated 17.2.2015, requested time till 30.4.2015 to provide all necessary documentary evidence, as there has been a change of person, who was handling that particular work in their company. This communication has been received by the respondent as could be seen from the endorsement in the office copy of the letter.

4. However, the respondent issued a notice dated 25.9.2015 proposing to revise the assessment, after which, one more revision notice was issued on 25.10.2016. In the third revision notice, the petitioner was granted 10 days time to submit their objections and appear for a personal hearing. On receipt of the notice, the petitioner, vide letter dated 27.10.2016, while acknowledging receipt of the notice dated 25.10.2016, stated that earlier, they submitted C-Forms for inter-state sales, that they are in the process of receiving the remaining C-Forms within a couple of weeks and that they are in the process of collating the documents pertaining to direct exports and indirect exports, etc and requested further time. The petitioner sought 60 days time to furnish complete set of documents. Whatever documents, which were furnished along with the letter dated 27.10.2016, have been acknowledged by the respondent in the office copy of the letter. However, the respondent, without giving any further opportunity, passed the impugned order.

5. It is seen that the respondent has taken note of the C-Form declarations, which were produced by the petitioner along with the letter dated 27.10.2016. If that be the case, the respondent could have granted some more time or passed an order either accepting or rejecting the request for adjournment. This has not been done by the respondent. Thus, there has been a violation of the principles of natural justice in the manner, in which, the assessment has been completed.

6. However, for this reason, this Court is not inclined to set aside the impugned assessment order, as partial relief has been granted to the petitioner in the impugned proceedings and proposes to pass the following order, which will meet the ends of justice and also protect the interest of the Revenue :

(i) The petitioner is directed to treat the impugned assessment order dated

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14.11.2016 as a show cause notice and submit their objections along with documents, within a period of 10 days from the date of receipt of a copy of this order.

(ii) On receipt of the objections, the respondent shall consider the same and pass a speaking order on merits and in accordance with law and

(iii) Till such time, the demand for the tax, as quantified in the impugned order, shall be kept in abeyance.

7. With the above directions, the writ petition is disposed of. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rs

To

The Assistant Commissioner (CT),
Ambattur Assessment Circle,
Chennai-58.

+1cc to Mr.K.Vaitheeswaran, Advocate, S.R.No.69352
+1cc to the Special Government Pleader(T), S.R.No.69609

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SM(CO)
CA(30/11/2016)

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