IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2017
CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.6193 of 2017
and
W.M.P.No.6678 of 2017

M/s.Amco Batteries Ltd.,
rep. by its Assistant Regional Manager,
No.43, Greams Road, Thousand Lights,
Chennai 600 006, Now having office at
Addison Building, 803, Anna Salai,
Chennai600002. ... Petitioner

-vs-

The Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
Chennai600031. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the respondent in its proceedings in CST/34301/2013-14, quash the assessment order dated 03.03.2017 passed therein and further direct the respondent to consider the Form F and Form C declarations filed along with the reply dated 22.02.2017 and pass a fresh order in accordance with law.

For petitioner : Mr.R.L.Ramani,
Senior Counsel
for Mr.B.Raveendran
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (T)

ORDER

The petitioner is aggrieved against the order of assessment dated 03.03.2017 passed in respect of the Assessment Year 2013-2014.

2. The main grievance of the petitioner is that the order of assessment was passed without considering the objection raised by the petitioner through letter dated 22.02.2017 enclosing Form-F and Form-C.

3. The petitioner is a registered dealer and manufacturer of batteries. After an order of Assessment is passed in respect of the Assessment Year 2013 - 2014, the respondent issued a notice dated 29.12.2016, proposing to reduce the exemption already allowed on interstate stock transfer. In the said notice, it is indicated that the Form-C was not filed and however Form-F was filed only for Rs.7,52,55,230/- and that the said Form-F was not filed in respect of Rs.9,32,15,593/-. The petitioner through their letter dated 22.02.2017, requested the Assessing Authority to consider the Form-F for value aggregating Rs.5,77,76,258/- and Form-C for Rs.7,64,306/- and to consider the request for furnishing the balance forms shortly. However, the Assessing Officer has passed the impugned order without considering the request made by the petitioner on 22.02.2017, as if the petitioner has not furnished the Form-F and Form-C.

3. Learned Senior Counsel appearing for the petitioner submitted that the petitioner has enclosed Form-F for a value as stated supra with the list attached as Annexure - A and Form-C for a value as stated supra with the list attached as Annexure-B, along with their reply dated 22.02.2017 and when the said reply was admitted to have been received by the respondent in the counter affidavit, the order of the assessment was passed without considering such reply and Form-C and Form-F furnished along with the same. Therefore, it is contended that the impugned order is an outcome of non application of mind.

4. The respondent has filed a counter affidavit wherein it is contended that though the petitioner has filed a reply on 22.02.2017, serving at the office on 22.02.2017, the said letter contained only a cheque and not the required Form-F, as claimed by the petitioner.

5. Learned Special Government Pleader appearing for the respondent reiterated the contentions raised in the counter affidavit filed by the respondent.

6.Heard both sides.

7. The main grievance of the petitioner is that the respondent has passed the order of assessment without considering the objections raised by the petitioner dated 22.02.2017, which contained the enclosures in Annexure - A and B viz., Form -F and Form - C, for the values as indicated above. It is seen that the respondent is not disputing such receipt of the communication from the petitioner. However, it is their contention that the said letter did not contain the enclosures as claimed by the petitioner. However, in the typed set of papers filed before this court, the petitioner placed the said

letter along with the enclosures. In an any event, as the perusal of the impugned order of assessment would undoubtedly indicate that the respondent has not adverted to the letter dated 22.02.2017, given by the petitioner and made any discussion on such communication, even though he has admitted the receipt of such communication in the counter affidavit, it can only drive to an irretrievable conclusion that the order of assessment, impugned in this writ petition, is nothing but an outcome of non application of mind.

8.Even assuming that the petitioner has not filed the Form - F and Form - C as claimed by the respondent in the counter affidavit, such contention is not stated in the impugned order of assessment. Even otherwise, this court has condoned such belated filing of forms and found that such belated filing cannot be the reason to deny the benefit if the same are filed at later point of time. In this case, the petitioner has enclosed the Annexures before this court viz., Form - F and Form - C. Even assuming that the same are not filed before the respondent, atleast now the respondent can consider the Form -C and Form - F and redo the assessment based on such materials.

9.Therefore, I find that the order of assessment has to be set aside and the matter has to be remitted back for reconsideration once again by the respondent. Accordingly, the Writ Petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the respondent for passing fresh order of assessment after considering the Form - C and Form - F filed by the petitioner along with the letter dated 22.02.2017. If they are not in the file of the respondent, the petitioner shall once again furnish those forms before the respondent and also additional forms and further objections if any, within a period of four weeks from the date of receipt of a copy of this order. On receipt of such forms and further objections/reply if any, the respondent shall consider the matter afresh and pass fresh order of assessment after giving opportunity of personal hearing to the petitioner as well. All these exercise shall be done by the respondent within a period of eight weeks from the date of receipt of such forms and further objections from the petitioner. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri/kas

To

The Assistant Commi9ssioner (CT),
Nungambakkam Assessment Circle,
Chennai 600 031.

+1cc to Mr.B. Raveendran, Advocate, S.R.No.18858
+1cc to the Government Pleader (Taxes), S.R.No.18737

ca(CO)
md(11/04/2017)

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