IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.5963 and 5964 of 2017
&
W.M.P.Nos.6387 and 6388 of 2017

Apple India (P) Limited
(Represented by its Manager (Trade & Compliance)
Mr.Raghunath Lakshmanan)
12th floor, Concorde Tower C
UB City, No. 24 Vittal Mallya Road
Bangalore-560 001. ....Petitioner in both W.Ps.

Vs.

The Assistant Commissioner (CT),
Manali Assessment Circle,
No.5/79, 5th Cross Street,
K.K.D.Nagar,
Kodungaiyur,
Chennai 600 118. ....Respondent in both W.Ps.

Common Prayer:

Petitions filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein in TIN:33651084776/2014-15 and TIN:33651084776/2015-16, dated 06.02.2017 respectively and quash the same.

For Petitioner ... Mr.N. Prasad
in both W.Ps.
For Respondents... Mr. S. Kanmani Annamalai
in both W.Ps Additional Government Pleader (T)



C O M M O N O R D E R

Both these writ petitions are filed by one and the same petitioner challenging the order of assessment in respect of Assessment Years 2014-15 and 2015-16.

2.The main grievance of the petitioner is that the impugned assessment orders were passed in violation of the principles of natural justice, as the materials relied on by the Assessing Authority were not furnished to the petitioner despite a request was made to that effect.

3.The petitioner is a Private Limited Company and an assessee on the file of the respondent. The petitioner is involved in the activity of import of various products from outside India and sell the same within this State and in other places. They filed their monthly returns and remitted their taxes at the applicable rate on the sales of the imported products. The officials of the respondent Department conducted an inspection at the places of the petitioner's premises on 04.08.2016 and a notice dated 07.01.2016 was issued on the petitioner indicating the proposals. It is stated in the said notice that on cross verification of the purchases reported in Annexure I of monthly returns with that of import data, it was found that there was a difference in purchases and thus, it is a purchase suppression. Therefore, the petitioner was called upon to file their objections against the above proposal within 15 days. Through their letter dated 27.01.2016, the petitioner sought one month time to reply to the said notice. Subsequently, the petitioner also sent another communication on 09.02.2016, requesting for providing breakup details of the imports data obtained by the respondent, which formed the basis for issuing the said notice. However, without furnishing those details, the respondent issued a notice on 18.11.2016, calling upon the petitioner to attend for a personal hearing on 06.12.2016. The petitioner attended such hearing and reiterated the request already made by giving a letter dated 05.12.2016, seeking for furnishing of cross verification details and the basis for the same. The respondent did not furnish such details. On the other hand, he passed the impugned order of assessment on 06.02.2017 and served the same on the petitioner on 06.02.2017. However, before such service of the impugned order, the petitioner, in fact, appeared on 07.02.2017 and handed over the letter dated 21.12.2016, indicating that the value of import arrived as per the revision notice dated 07.01.2016 is factually not correct going by the value of imports as per books of accounts.



4. The respondent filed a counter affidavit by reiterating the contentions raised in the show cause notice and the order of assessment. According to the respondent, the petitioner was given sufficient opportunity including the personal hearing and therefore, there is no violation of the principles of natural justice.

5.Learned counsel appearing for the petitioner submitted that when admittedly the show cause notice was issued based on the materials collected from import data, without furnishing those details to them, the petitioner cannot be expected to file an effective objection. Therefore, he submitted that it is not enough to give a personal hearing alone to satisfy the requirement of the principals of natural justice unless such personal hearing is also an effective one by furnishing all the materials relied on by the department to the petitioner well in advance.

6..Learned Special Government Pleader appearing for the respondent those sought to sustain the order of assessment on the reason that the same came to be passed based on the materials collected from the import data, is however fair enough to concede to the possession that the materials collected from the import data, which formed basis for the assessment, were not furnished to the petitioner at any point of time.

7.Heard learned counsel appearing for the petitioner and learned Additional Government Pleader appearing for the respondent.

8. It is not in dispute that the impugned orders of assessment in respect of the Assessment Years 2014-15 and 2015-16 were passed based on the import data. It is the specific contention of the Assessing Authority that there is a difference in purchases between the monthly returns filed by the petitioner and the import data collected by the respondent. Thus, according to the respondent, there is a purchase suppression.

9.Needless to say that when the respondent relied on certain materials collected from import data for passing the assessment, he has to furnish the same to the assessee so that the assessee can file a suitable objection/ reply to the allegations made in the show cause notice. In my considered view, even without asking for such details, it is the duty of the Assessing Authority to furnish the same to the assessee in order to show and establish that the principles of natural justice is followed in its strict sense.



10.Certainly, mere hearing of the petitioner is not enough to show the compliance of the principles of natural justice, unless such hearing is also an effective one preceded by furnishing of all the materials sought to be relied by the Assessing Authority to the petitioner well in advance. Certainly, the petitioner should not be taken by surprise by producing those materials at the time of personal hearing. In this case, though the petitioner sought for such details well in advance through their communication dated 09.02.2016, the respondent has not chosen to furnish those details at any point of time. On the other hand, the assessment orders came to be passed by confirming the proposal.

11.Therefore, I am of the view that the impugned orders of assessment cannot be sustained solely on the ground of violation of the principles of natural justice and consequently, the matter has to go back to the Assessing Authority for redoing the assessments once again after hearing the petitioner and also by furnishing those material details to them.

12.Learned counsel for the petitioner also invited this court's attention to an order passed in W.P.No.36654 of 2015 dated 30.11.2015, arising out of a similar case, wherein this court has set aside the 2 impugned order, remitted the matter back to the officer concerned to pass fresh order after furnishing those details.

13.Accordingly, both these writ petitions are allowed and impugned orders of assessment are set aside. Consequently, the matter is remitted back to the respondent for passing the order of assessment afresh after furnishing the materials sought for by the petitioner in their communication dated 09.02.2016 and also by affording them a personal hearing once again. All these exercise shall be done and completed by the respondent within a period of eight weeks from the receipt of a copy of this order. No costs. The connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CSIV)

True Copy

Sub-Assistant Registrar

vri/at
To
The Assistant Commissioner (T),
Manali Assessment Circle,
No.5/79, 5th Cross Street,
K.K.D.Nagar,
Kodungaiyur,
Chennai 600 118.
+1 cc to Special Government Pleader sr 19048
+1 cc to Mr.N.Inbarajan Advocate sr 18480

W.P.Nos.5963 and 5964 of 2017
&
W.M.P.Nos.6387 and 6388 of 2017

ca(co)
aa11/04/2017