IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.12.2017

CORAM

THE HON'BLE MR.JUSTICE T.SIVAGNANAM

W.P.Nos.26602 to 26606 of 2017
and W.M.P.Nos.28313 to 28317 of 2017

Flowserve India Controls Pvt. Ltd.,
Represented by its Plant Controller
P.Sabarinathan
No.136/3 & 137, Myleripalayam Road
Othakalamandapam
Coimbatore. ... Petitioner in all W.Ps.

..Vs..

The Assistant Commissioner (CT)
Avanashi Road Circle,
Coimbatore. .. Respondent in all W.Ps.

Prayer in W.P.No.26602 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in CST:268755/2007-08, dated 18.08.2017, quashing the same.

Prayer in W.P.No.26603 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in CST:268755/2008-09, dated 18.08.2017, quashing the same.

Prayer in W.P.No.26604 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in CST:268755/2009-10, dated 18.08.2017, quashing the same.

Prayer in W.P.No.26605 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in CST:268755/2010-11, dated 18.08.2017, quashing the same.

Prayer in W.P.No.26606 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in CST:268755/2011-12, dated 18.08.2017, quashing the same.

For Petitioner in all W.Ps. : Mr.N.Prasad

For Respondent in all W.Ps. : Mr.K.Venkatesh
Government Advocate

COMMON ORDER

Heard Mr.N.Prasad, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2.The petitioner in these writ petitions has challenged the assessment orders passed under the Central Sales Tax Act, 1956 (hereinafter referred to as "CST Act") for the assessment years 2007-2008 to 2011-2012.

3.The learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondent would submit that the legal issue involved in these writ petitions is squarely covered by the decision in the case of Schwing Stetter Pvt.(India) Ltd. vs. Assistant Commissioner (CT), Sriperumbudur Assessment Circle, Varadarajapuram in W.P.Nos.22630 to 22636 of 2017 dated 24.08.2017. The operative portion of the order reads as follows:

> "18.Thus, the first respondent was bound to consider the objections filed by the petitioner, and pass a speaking order. It would be incorrect on that part of the first respondent to state that, merely because, vires of Section 2 (11) has been upheld, the petitioner will not heard on merits and are required to remit the differential rate of tax. If this is the interpretation given by the first respondent, it would run contrary to the decision of the Division Bench, dated 05.04.2016, wherein, liberty was granted to file objections to revision notices. This liberty is not an empty formality. Therefore, the Assessing Officer, the first respondent is bound to consider the objections. However, this Court would add a word of caution that, if the petitioner seeks to canvass the very same grounds, that were raised before the

Division Bench, while challenging the vires of Section 2 (11), it would be well open to the Assessing Officer to reject such contentions, as has already been considered by the Division Bench and rejected. In any event, the Assessing Officer is bound to say so, as he is the statutory Authority, vested with power of assessment. In the instant cases, the petitioner specifically sought for an opportunity of personal hearing, which has not been afforded. The Division Bench, in several decisions has observed that, in the absence of specific prohibition under the statute, for affording an opportunity of personal hearing, the Assessing Officer could afford such personal hearing, as it would help the Assessing Officer to complete the assessment in a proper manner.

19.Thus, this Court is satisfied that the impugned orders have been passed in violation of the principles of natural justice. As pointed out earlier, the oral prayer sought for by the petitioner, seeking leave of this Court to file Review Petitions before the second respondent cannot be acceded to, in the light of the facts noted above and observations made thereon.

20.Therefore, for the reasons stated above, the Writ Petitions are allowed, the impugned orders are set aside and the first respondent is directed to consider the objections filed by the petitioner, dated 06.04.2017, afford an opportunity of personal hearing to the authorized representative of the petitioner and pass a speaking order on merits and in accordance with law. As stated above, if the first respondent is of the view that the petitioner is attempting to re-argue the points canvassed before the Division Bench, it is well open to the first respondent to say so and reject the objections. The first respondent is expected to consider the other factual issues, which may be canvassed by the petitioner by way of objections, dated 06.04.2017. No costs. Consequently, connected Writ Miscellaneous Petitions are closed."

4.In the light of the fact that the issue raised in these writ petition are squarely covered by the above referred decision, the writ petitions are liable to be allowed on the same terms. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the respondent is directed to consider the objections filed by the petitioner, dated 11.02.2017, afford an opportunity of personal hearing to the authorized representative of the petitioner and pass a speaking order on merits and in accordance with law. As stated above, if the respondent is of the view that the petitioner is attempting to re-argue the points canvassed before the Division Bench, it is well open to the respondent to say so and reject the objections. The respondent is expected to consider the other factual issues, which may be canvassed by the petitioner by way of objections, dated 11.02.2017. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

dna/cse

To

The Assistant Commissioner (CT)
Avanashi Road Circle,
Coimbatore.

+1cc to Mr.N.INBARAJAN Advocate, S.R.No. 91226
+1cc to the Government Pleader(Taxes), S.R.No.91775

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RJ(CO)
TR(19/01/2018)