IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.01.2017

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The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.44458 of 2016

and WMP Nos.38303 and 38304 of 2016

M/s.Yazaki Wiring Technologies India
Private Ltd.,
Rep. by its Authorized Signatory - K.Ramesh,
D-7, Industrial Estate,
Maraimalai Nagar - 603 209,
Kancheepuram District. .... Petitioner

Vs.

The Assistant Commissioner (CT),
Chengalpattu Assessment Circle,
Anna Nagar,
Chengalpattu-603 001,
Kancheepuram District. .... Respondent

Prayer : Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, or any other appropriate Writ, order or direction in the nature of a Writ, calling for the records on the file of the respondent in its impugned proceedings made in TIN.33941600675/2010-2011, dated 26.10.2016 quash the same.

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For Petitioner : Mr.R.Hemalatha

For Respondent : Mr.K.Venkatesh,
Govt. Advocate

O R D E R

1. Issue notice. Mr.K.Venkatesh, learned Government Advocate, accepts notice on behalf of the respondent.

1.1. With the consent of counsels for parties, the writ petition is taken up for hearing and final disposal.

2. To be noted, this is a second round of litigation for the petitioner. The impugned order of assessment, which has been assailed in the instant writ petition, and is dated 26.10.2016, pertains to the Assessment Year 2010-2011.

3. The brief facts, which are required to be noticed for disposal of the writ petition, are as follows :

3.1. Evidently, the petitioner's business premises was inspected by the Enforcement Wing of the Department on three (3) different dates, i.e., 10.05.2011, 12.05.2011 and 16.05.2011.

3.2. The said inspections led to the generation of an inspection report. Based on the inspection report, notice for revising the assessment dated 12.05.2014, was issued to the petitioner.

3.3. The petitioner qua, the said notice filed its objections dated 28.05.2014. Via the objections, the purported discrepancy in the stock was sought to be explained.

3.4. It was the stand of the petitioner that at the time of inspection, no physical verification of the stock was done, and therefore, no reconciliation was carried out, as between what was reflected in the books of accounts, and that, which was available at site.

3.5. Evidently, the respondent was not persuaded by the objections filed by the petitioner, and therefore, proceeded to confirm its revision proposal, by passing an order dated 30.06.2014.

4. This order was challenged by the petitioner by way of writ petition being : W.P.No.23118 of 2014.

4.1. This court, vide order dated 01.09.2014, set aside the order dated 30.06.2014 on the ground that no opportunity was given to the petitioner to represent its case. Accordingly, the matter was remitted to the respondent with a direction to give an opportunity to the petitioner to explain its stand and also file additional documents, if any, within a period of fifteen (15) days of receipt of a copy of the order.

4.2. The respondent was, thus, directed to file a fresh order within one (1) month of receipt of the documents, and/or upon hearing the explanation advanced on behalf of the petitioner.

4.3. Resultantly, the respondent on 09.03.2015, issued a notice to the petitioner calling for its explanation. The petitioner, accordingly, filed its detailed objections vide letter dated 06.04.2015. The relevant documents, in support of its objections, were also, apparently, filed by the petitioner.

4.4. The respondent, however, once again was not persuaded by the explanation given by the petitioner, and therefore, passed an order dated 30.06.2015.

4.5. The petitioner, being aggrieved, by the order dated 30.06.2015, preferred an appeal before the appellate authority, i.e., Deputy Commissioner (CT), Chennai (South).

4.6. The appeal was partly allowed and the matter was remanded to the respondent for a fresh disposal. The remand was limited to the stock variation, which was pegged at Rs.4,29,39,009/-.

4.7. This order, passed by the appellate authority, is dated 21.01.2016. In consonance with the order of the appellate authority, the respondent issued a notice dated 23.09.2016. Once again, the petitioner filed its objections, which are dated 04.10.2016.

4.8. The respondent, for the third time, rejected the objections of the petitioner and strangely enough, valued the stock variation at Rs.7,35,54,579/- without giving notice of enhancement to the petitioner.

5. I must also note that via the impugned order, the respondent has reversed the Input Tax Credit on Hiring Charges. The Input Tax Credit reversal by the respondent is crystallised at Rs.1,00,811/-.

5.1. I may also note that reversal of Input Tax Credit has been brought about, in view of the fact that the petitioner's appeal preferred before the Deputy Commissioner (CT), on this aspect of the matter, was rejected.

6. Counsel for the petitioner says that the instant writ petition has, thus, been filed to assail that part of the order, whereby, the purported stock variation has been enhanced from Rs.4,29,39,009/- to Rs.7,35,54,579/-.

7. I have put to Mr.Venkatesh, learned Government Advocate, who appears for the respondent, as to whether in these circumstances, the impugned order could be sustained, when, no notice of enhancement vis-a-vis stock variation was given.

7.1. Mr.Venkatesh, could not, but submit, that such enhancement in the stock variation values was not tenable, without notice of enhancement to the petitioner.

8. Accordingly, the impugned order is set aside to the extent that it enhances the stock variation values.

8.1. The respondent is directed to re-hear the petitioner on this aspect of the matter, but before he does that, he would furnish the material/information available with him, which forms the basis for the enhancement.

8.2. If, such material is supplied, the respondent will give due opportunity to the petitioner to file its objections. Furthermore, personal hearing in the matter will also be afforded, before passing a fresh order in the matter.

9. The writ petition is disposed of in terms of the aforesaid direction. Consequently, pending applications shall stand closed. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

The Assistant Commissioner (CT),
Chengalpattu Assessment Circle,
Anna Nagar, Chengalpattu-603 001,
Kancheepuram District.

+1cc to M/s.R.Hemalatha, Advocate sr.176

+1cc to Special Government Pleader sr.157

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ss(8/2/2017)