IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.4.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.10739 OF 2018 & WMP.NO.12676 OF 2018

Bonfiglioli Transmissions Private Limited, rep.by its Head Commercial Mr.T.K.Ravi ...Petitioner

Vs

The Assistant Commissioner (ST),
Thirumudivakkam Assessment Circle,
Nos.32 & 33, Sripuram II Street,
Chrompet, Chennai-44. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in the proceedings of the respondent in CST.No.772273/2011-12 dated 23.3.2018 issued by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, 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 is aggrieved by an order of assessment under the provisions of the Central Sales Tax Act, 1956 for the year 2011-12 only with regard to inter-state sales without C forms.

3. The petitioner claims that the rate of tax levyable is 5%. However, the respondent, while completing the assessment, held the sales turnover to be assessed at 14.5%. The petitioner relied upon an order passed in their own case for the earlier assessment year wherein the Appellate Deputy Commissioner (CT) allowed the petitioner's appeal and held that the petitioner is liable to pay tax at 4%. However, the respondent did not accept the said submission on the ground that the Revenue filed an

appeal against the said order and that the matter is pending before the Appellate Tribunal in STA.No.159/14.

4. After the assessment order was passed, the petitioner sent a representation dated 26.3.2018 requesting the respondent to assess the inter-state sales of gear boxes manufactured for wind mill application at 5% CST either by treating the goods as capital goods or renewable energy devices and spare parts. This representation is pending before the respondent. In the light of the above, this Court is not inclined to interfere with the impugned order. But, taking note of the fact that the representation is now pending before the respondent, this Court is inclined to direct the respondent to consider the said representation.

5. Accordingly, the writ petition is disposed of with a direction to the respondent to treat the representation of the petitioner dated 26.3.2018 under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 and redo the assessment under the said head after affording an opportunity of personal hearing. The petitioner is at liberty to substantiate their contentions by producing necessary materials before the respondent. The respondent is further directed to hear the petitioner in person and take a decision on the representation of the petitioner dated 26.3.2018 within a period of three weeks from the date of receipt of a copy of this order. Till then, no coercive action shall initiated against the petitioner for recovery of tax at 14.5% under the said head.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST),
Thirumudivakkam Assessment Circle,
Nos.32 and 33, Sripuram II Street,
Chrompet, Chennai-44.

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.31198

WP.No.10739 of 2018&
WMP.No.12676 of 2018

GMR(CO)
CS/17/05/18