IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.2419, 2422 & 2426 of 2019
and
W.M.P.Nos.2668, 2672 & 2676 of 2019

Schneider Electric India Pvt. Limited
Represented by its Manager-Finance Mr.B.Suresh
No.172, Poonamallee Bypass Road, Poonamallee,
Chennai-600 056. ...Petitioner (in all Wps)

vs.

The Assistant Commissioner (ST)
Ambattur Assessment Circle
No.127, 1st Floor Yadhaval Street,
Padi, Chennai-600 050. ... Respondent (in all Wps)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the assessment order in TIN/33641363220/2012-2013, 2013-2014 & 2015-2016 respectively dated 30.11.2018 passed by the respondent, quash the same as arbitrary and illegal.

For Petitioner : Ms.Mary Jessy
for Mr.Joseph Prabakar

For Respondent : Mr.M.Hariharan
Additional Government Pleader

C O M M O N O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the orders of assessment dated 30.11.2018 relevant to assessment years 2012-2013, 2013-2014 & 2015-2016.

3. The Assessing Officer has chosen to pass the impugned assessment orders on the reason that the petitioner filed their returns belatedly and thus, they are liable to pay interest as well. On the other hand, it is contended by the petitioner that the Assessing Officer is not justified in taking the turnover under the CST Act, for calculating the ceiling of Rs.200 crores so as to file their returns on or before 12th of every succeeding month, without considering the turnover made under the TNVAT Act, which is lessor than Rs.200 Crores and consequently, the petitioner is entitled to file their return on or before 20th of every succeeding month. Thus, it is seen that the dispute with regard to the date of filing of the returns is the core issue between the assessee and the Assessing Officer. It is seen that the Assessing Officer has rejected the objections raised by the petitioner and proceeded to pass the impugned orders without affording an opportunity of personal hearing to them.

4. Though the learned Additional Government Pleader for the respondent justified the reason stated in the impugned orders, however, is not disputing the fact that personal hearing was not conducted, even though he sought to contend that such opportunity was offered to the petitioner at the time of issuing the notice of proposal itself, which they failed to utilize.

5. Perusal of the said notice would show that the petitioner was called upon to appear in person on any working day in the notice time. This Court has already considered the said aspect and found that such course of providing personal hearing is not an effective and proper opportunity, since such personal hearing has to be conducted only after filing the reply. Therefore, without expressing any view on the merits of the reasons stated in the impugned orders, this Court is inclined to remit the matter back to the Assessing Officer for giving an opportunity of personal hearing to the petitioner and to complete the assessment thereafter. The petitioner is at liberty to raise all the contentions as raised in this writ petition before the Assessing Officer at the time of personal hearing.

6. Insofar as the assessment years 2012-2013 & 2013-2014 are concerned, the learned counsel for the petitioner submitted that in respect of other issue viz., Reversal of Ineligible ITC claim raised and decided by the Assessing Officer in the impugned proceedings, the petitioner is not disputing or agitating the same. The said statement is recorded.

7. Accordingly, this writ petition is allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment, after giving due opportunity of personal hearing to the petitioner. The whole exercise shall be done by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST)
Ambattur Assessment Circle
No.127, 1st Floor Yadhaval Street,
Padi, Chennai-600 050.

+1cc to the Special Government Pleader Sr.7833

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