IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.23530 of 2019
and
W.M.P.No.23339 of 2019

M/s.Wabco India Ltd.,
Plot No.3, South Phase, 3rd Main Road
Ambattur Industrial Estate, Chennai-600 058.
(Represented by its General Manager-Legal)
... Petitioner

vs.

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

2. The Commissioner of State Taxes
Chepauk, Chennai-05.

3. The Government of Tamil Nadu
Represented through its Secretary
Department of Commercial Taxes
Tamil Nadu Secretariat. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling for the records relating to the impugned order in CST No.871408/2010-2011 dated 27.05.2019 passed by the 1st respondent and quash the same.

For Petitioner : Mr.Raghavan Ramabadran
for Mr.Lakshmi Kumaran

For Respondents: Mr.M.Hariharan
Additional Government Pleader

O R D E R

This writ petition is filed challenging the order of assessment dated 27.05.2019 relevant to the assessment year 2010-2011.

2. The impugned assessment order was passed by dealing with two issues viz., (a) Sales against Form-C and (b) Stock

Transfer sales not covered by declaration Form-F. Though the order of assessment is put to challenge in this writ petition as a whole, the learned counsel for the petitioner Mr.Raghavan Ramabadran, fairly submitted that insofar as the assessment made by the Assessing Officer in respect of the issue viz., Exemption claimed on stock transfer sales not covered by declaration Form-F is concerned, the Assessee has already filed an application under Section 84 of the Tamil Nadu Value Added Tax Act, seeking rectification dated 28.06.2019 and the said petition is still pending. Therefore he submitted that the petitioner will workout their remedy in the said rectification petition insofar as the above said issue is concerned and thus, the petitioner is confining the relief in this writ petition only as against assessment made in respect of the other issue viz., Sales against Form-C.

3. It is the contention of the petitioner that the original C-forms were submitted before the then Assessing Officer and they are having the duplicate copies of the same. Thus, it is contended that the Assessing Officer is not justified in concluding the assessment against the petitioner only on the reason that the petitioner has not produced acknowledgement for filing the original C-forms before the then Assessing Officer, even though the petitioner filed the duplicate C-forms before the present Assessing Officer.

4. Thus, the learned counsel for the petitioner submitted that even in the absence of original C-forms, the Assessee is entitled to file the duplicate forms before the Assessing Officer, who inturn, can consider the same after verifying its genuineness.

5. The learned Additional Government Pleader for the respondents, based on instructions, submitted that the Assessing Officer will consider the duplicate copies of C-forms submitted by the petitioner after verifying the genuineness of the same and if it is found in order, the Assessing Officer will pass fresh orders once again.

6. Considering the above stated facts and circumstances, more particularly, considering the fact that the Assessing Officer has chosen to decide the issue viz., Sales against form C, against the petitioner only on the reason that the petitioner has not filed the proof of acknowledgement for filing original C-forms before the then Assessing Officer and further considering the fact that the Assessing Officer is not disputing the fact that the duplicate C-forms were filed before him, this Court is of the view that the Assessing Officer shall consider the duplicate C-forms filed by the petitioner and pass fresh orders on merits and in accordance with law, after giving due opportunity of hearing to the petitioner as well.

7. In view of the above findings as well as the above

undertaking given by the respondent/Assessing Officer, this Writ Petition is allowed in part and the impugned order is set aside only in respect of the issue regarding sales against form C and corresponding penalty. Consequently, the matter is remitted back to the Assessing Officer for reconsidering the said issue after considering the duplicate copies of C form already filed by the petitioner and pass fresh orders on merits and in accordance with law. 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 petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of State Taxes
Chepauk, Chennai-05.

3.The Government of Tamil Nadu
Represented through its Secretary
Department of Commercial Taxes
Tamil Nadu Secretariat.

+1cc to Mr.Lakshmi Kumaran, Advocate, S.R.No. 96875
+1cc to the Special Government Pleader(Taxes), S.R.No. 97704

W.P.No.23530 of 2019

RK(CO)
GN(20/12/2019)