IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.22924 of 2019
& W.M.P.No.22561 of 2019

M/s.Amco Batteries Ltd.
Represented by its Company Secretary
'Addison Buildings', First Floor
803, Anna Salai,
Chennai - 600 002. .. Petitioner

Vs.

The Assistant Commissioner (ST)
Nungambakkam Assessment Circle
Chennai - 600 031. .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the respondent in his proceedings in CST/34301/2017-18 (Upto June 2017), quash the assessment order dated 12.04.2019 made therein.

For Petitioner : Mr.R.L.Ramani
for Mr.P.V.Sudakar

For Respondent : Ms.G.Dhanamadhri,
Government Advocate

O R D E R

Mr.R.L.Ramani, learned Senior Counsel appearing on behalf of the counsel on record for writ petitioner (instructed by counsel on record Mr.P.V.Sudakar in Court) and Ms.G.Dhanamadhri, learned Government Advocate, who accepts notice on behalf of the sole respondent are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. 'An order dated 12.04.2019 pertaining to writ petitioner's assessment number being CST No.34301/2017-18'. (hereinafter impugned order for brevity) has been called in question in the instant writ petition.

4. Learned Senior Counsel adverting to the impugned order submits that impugned order is for the assessment year 2017-18 and it is only for three calender months i.e., April, May and June 2017, as the GST Regime started operating on and from 01.07.2017.

5. It is pointed out by learned Senior Counsel that returns were filed by writ petitioner under Central Sales Tax Act, 1956 ('CST Act' for brevity), respondent issued a revisional notice dated 31.01.2019 inter alia, setting out a proposal regarding assessment, primarily on the ground that writ petitioner has not filed two sets of documents one being Declaration Forms pertaining to concessional rate of tax that has been claimed and another pertaining to documents to support exemption that has been claimed. In response to this revisional notice from the respondent, writ petitioner sent a reply dated 26.02.2019, submitting some Forms and seeking time with regard to some other Forms stating that writ petitioner has not received the same from their branches. Writ petitioner, vide this communication dated 26.02.2019 (communication in response to revisional notice) had also sought one month time to collect the documents from the branches/clients and furnish the same to the respondent.

6. Under the aforesaid circumstances, impugned order came to be passed.

7. Impugned order is assailed on the ground that it has not considered the reply/response of the writ petitioner to the revisional notice.

8. Learned Revenue Counsel, who has accepted notice on behalf of the respondent, supported the impugned order by submitting that respondent does have powers to make a revised assessment more so when the writ petitioner has not filed requisite Forms and supporting documents with regard to concessional rate of tax and exemption which has been claimed in the return filed by the writ petitioner.

9. This Court has carefully considered the rival submissions.

10. There is no difficulty in accepting the submission of learned Revenue Counsel that respondent does have the statutory powers to make a revised assessment, but what is of significance is, respondent having chosen to give a reasonable opportunity to writ petitioner, has neither referred to the revisional notice nor the response to the same in the impugned order. There is nothing in the impugned order to show that the revisional notice and the writ petitioner's response to the same, particularly,

the writ petitioner having submitted some documents and sought time for some other documents have been considered. An impugned order cannot be improved by way of respondent counsel's submission or by a counter affidavit. It is submitted by learned Senior Counsel, on instructions, that writ petitioner will now have all the documents, particularly, the Forms and supporting documents qua concessional rate of duty and exemption, will be ready for submission within four weeks from today. This submission made on instructions is recorded.

11. In the light of the aforesaid backdrop, impugned order is set aside solely on the ground of reasonable opportunity aspect without expressing any view or opinion on merits. Writ petitioner is now granted four weeks time from today to submit further documents/forms qua concessional rate of duty/exemption as per revisional notice dated 31.01.2019. Thereafter, respondent shall redo the revised assessment as expeditiously as possible on the merits of the matter in accordance with law and in any event within 12 weeks from the submission of documents/forms.

12. Writ petition is disposed of with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

vsm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner of State Tax
   Nungambakkam Assessment Circle,
   Chennai - 600 031.

+1cc to Mr.B.Raveendran, Advocate, SR.No.66793
+1cc to the Spl. Govt.Pleader, Vide Sr.No.67241

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Kak(18/09/2019)