IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2020

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.6676 to 6682 of 2017
and
W.M.P.Nos.7192 to 7205 of 2017

M/s.WABCO India Ltd.,
Rep by its Chief Financial Officer,
South Phase, Plot No.3, Third Main Road,
Ambattur Industrial Estate,
Chennai-600 058. ..Petitioner in all WPs.

-Vs-

1.The Assistant Commissioner (CT),
Ambattur Assessment Circle,
Chennai-600 058.

2.The Joint Commissioner (CT),
Enforcement-II, Chennai,
PAPJM Building, No.1, Greams Road,
Chennai-600 006.

3.The Deputy Commissioner (CT),
Enforcement South,
Greams Road,
Chennai-600 006.

4.The Commissioner of Commercial Taxes,
Chepauk,
Chennai-600 005. ..Respondents in all WPs.

COMMONPRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the first respondent in the impugned Order Nos.TIN33030461698/2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, dated 31.01.2017 and Order No.Rc.TIN/33030461698/2009-10 to 2015-16 dated 07.03.2017 and quashed the same.

WP.NO.6676 to 6682 of 2017: As the same is passed without jurisdiction being violative of Articles 286(1)(b) of the Constitution and Section 5(1) and 5(2) of the CST Act, 1956, violative of Entry 97 of the Union List as it seeks to impose tax on service income and it is against the principles of natural justice since it travels beyond the revision notice; passed on the pre-determined basis without considering the available records and returns or to issue any other appropriate writ or Order as this Hon'ble High Court may deem fit and proper to the facts

For Petitioner : Mrs.R.Charulatha
(in all Wps.)

For Respondents: Mr.Mr.R.Swarnavel
Government Advocate
(in all Wps.)

C O M M O N O R D E R

The Writ Petitions are heard through Video Conferencing on 30.07.2020. With the consent of both the parties, the cases are taken up for final disposal.

2. The common issue involved in all these Writ Petitions is that the impugned proceedings/notices are made on the basis of the Audit Reports/Inspection Proposals proceeded from the Enforement Wing or from ISIC Authorities. Among other grounds, all the petitioners herein have raised a ground that the Assessing Officer, who is a Quasi Judicial Authority, has not independently applied his mind while dealing with the impugned proceedings, but had adopted the averments and proposals of the Enforcement Wing/ISIC Authorities, who are their higher authorities.

3. This ground raised by the petitioners have been upheld by this Court in various Writ Petitions holding that the Assessing Officer cannot be solely guided by the proposal given by the Enforcement Wing Officers and that the Assessing Officer has to independently consider the same, without being influenced by such proposals of the higher officials. Some of the decisions in which such a view has been taken are in the cases of Madras Granites (P) Ltd., Vs. Commercial Tax Officer and Another reported in 2006 (146) STC 642 (MAD) and Narasus Roller Flour Mills Vs. Commercial Tax Office, (Enforcement Wing), Sankagiri and another reported in 2015 (81) VST 560 (MAD).

4. Such a ratio laid down by this Court in all the above Writ Petitions stand good till date and in these background, the Commissioner of State Tax, Chennai had issued a Circular No.3 dated 18.01.2019, empowering the Assessing Authority to deviate from the proposals, without seeking for approval from the Enforcement Wing/ISIC Authorities. The relevant portion of the Circular No.3 dated 18.01.2019 reads thus:-

> "b) If the Assessing Authority is of the view that the Audit report or Inspection proposals received from Enforcement wing or proposals received from ISIC are not in conformity with the Law or the established principles set by various higher judicial Forums and if he wishes to deviate from the proposals either partly or wholly, he himself can finalize the assessment or revision of assessment without seeking approval from the Enforcement Wing/ISIC Authorities who had approved the proposals, and reasons for the same to be recorded."

Thus, the Circular has empowered the Assessing Officers to henceforth independently deal with the assessment without being influenced by the proposals of the higher officials.

5. At this juncture, the learned counsel for the petitioner would submit that pursuant to the interim orders of this Court dated 21.03.2017, the petitioner had paid 10% of the demand of tax to the Assessing Officer. It is made clear that such remittance of 10% of the tax will be the out come of the proceedings taken by the Assessing Officer.

6. In view of the Circular No.3 dated 18.01.2019 issued by the Commissioner of State Tax, Chennai, all the impugned proceedings in these batch of Writ Petitions, which proceeds on the basis of the proposals/reports of the Enforcement Wing/ISIC, are set aside and consequently, the matters are remanded back to the Assessing Officer. The Assessees are granted liberty to file their objections with all supporting documents, within a period of 30 days from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall extend due opportunity of personal hearing to the Assessee/Representatives, if necessary through Video Conferencing and endeavor to conclude the assessment proceedings, atleast within a period of 12 weeks from the date of receipt of the objections. In case, if the objections are not received within the date of expiry of 30 days from the date of receipt of a copy of this order, the Assessing Officer shall commence the assessment proceedings, after the expiry of the 30

days indicated above.

7. With the above observations and directions, all the Writ Petitions stand thus allowed. Consequently connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//
Sub Assistant Registrar

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To

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Greams Road,
Chennai-600 006.

4.The Commissioner of Commercial Taxes,
Chepauk,
Chennai-600 005.

+7cc to M/s.Lakshmikumaran, Advocate SR.31411
+1cc to Spl Govt Pleader(Taxes) SR.31555

W.P.Nos.6676 to 6682 of 2017
and
W.M.P.Nos.7193, 7195, 7197, 7199, 7201, 7203 & 7205 of 2017

SRA(CO)
CB(11/11/2020)

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