

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MARCH, 2015

PRESENT

THE HON'BLE MR. JUSTICE VINEET SARAN

AND

THE HON'BLE MRS. JUSTICE S.SUJATHA

WRIT APPEAL NOS.957-966/2015(T-RES)

BETWEEN:

ABB INDIA LTD.,
(FORMERLY KNOWN AS
ABB LIMITED)
PLOT NOS.4, 5 & 6, 2ND PHASE,
PEENYA INDUSTRIAL AREA,
BANGALORE-560 058
REP. HEREIN BY ITS
ASST. VICE PRESIDENT – TAXATION
MR.SANTHOSH KUMAR HEGDE.

...APPELLANT

(BY SRI K.P.KUMAR, SR. COUNSEL APPEARING
A/W SRI SANDEEP HUILGOL, ADV., (M/S KING & PARTRIDGE)

AND:

THE DEPUTY COMMISSIONER OF
COMMERCIAL TAXES,
(AUDIT) – 6.2 DVO-06
KIADB BHAVAN, PEENYA,
BANGALORE-560 058.

...RESPONDENT

(BY SRI K.M.SHIVAYOGISWAMY, AGA)

THESE WRIT APPEALS ARE FILED U/S.4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN
THE WRIT PETITION NOS.8701-8710/2015 DATED 5.3.15.

THESE WRIT APPEALS COMING ON FOR PRLY. HEARING THIS DAY, *VINEET SARAN J.*, DELIVERED THE FOLLOWING:

JUDGMENT

The short question involved in these appeals is as to whether the opportunity of personal hearing afforded to the petitioner/appellant was sufficient or not; and as such whether, in the facts of the present cases, the principles of natural justice had been complied with.

2. The dispute in the present appeals relate to the Assessment year 2013-14 under the Karnataka Value Added Tax Act, 2003 (for short 'KVAT Act'). The relevant facts of this case are that after the assessee-appellant had filed its objections to the show cause notice, a written notice dated 10.02.2015 was issued by the respondent-Assessing Officer fixing 12.02.2015 as the date fixed for personal hearing of the appellant. On the said date, an adjournment was sought by the appellant, which was refused without assigning any reason for not granting the adjournment. On the same date, the

hearing is said to have been concluded, without the appellant participating in the hearing and on the very next date i.e., 13.02.2015, Assessment/Re-assessment order was passed by the respondent-assessing authority imposing a tax liability, including interest and penalty, of over Rs.18 crores. Challenging the order of the respondent-assessing authority, the appellant-assessee filed a W.P.Nos.8701-8710/2015, which has been dismissed by the learned Single Judge but the appellant has been permitted to file an appeal against the order dated 13.02.2015 before the first appellate authority, which was directed to be decided and disposed of within a period of four weeks from the date of filing of appeal. The writ Court has also directed that the appellant shall be permitted to deposit only 30% of the demand raised by the Assessment Order dated 13.02.2015 and on deposit of such amount, the appeal shall be decided on merits and in accordance with law. While considering the question of

alternate remedy, the learned Single Judge, after relying on the decision of the Apex Court in the case of *Whirlpool Corporation -vs- Registrar of Trade Marks, Mumbai & Ors. reported in (1998) 8 SCC 1*, has considered that the availability of alternate remedy would not be a bar in case where there is violation of principles of natural justice but holding that by notice dated 10.02.2015, opportunity of personal hearing was given by the assessing authority, the learned Single Judge held that the same was sufficient compliance of principles of natural justice. Aggrieved by the said judgment of the writ Court, this intra Court appeal has been filed.

3. Having heard Sri K.P.Kumar, learned Senior counsel along with Sri T.Suryanarayana, learned counsel appearing on behalf of the appellant as well as Sri.K.M.Shivayogiswamy, learned AGA appearing on behalf of the respondent at length, we are of the view that in the

present cases, the appellant was not given sufficient opportunity of hearing and as such, there is a clear violation of principles of natural justice. We are, thus, also of the opinion that the writ petitions ought not to have been dismissed on the ground of availability of alternate remedy.

4. As we have already stated above, the notice for personal hearing was issued by the Assessing Officer on 10.02.2015 requiring the petitioner/appellant to appear on 12.02.2015, that is to say, only 48 hours notice was given to the assessee for personal hearing. A short adjournment was sought by the assessee on 12.02.2015, which was refused by the Assessing Officer without assigning any reason. Opportunity of hearing has to be given in a manner so that the party may practically be able to participate in the hearing. Mere 48 hours notice to a party would not be sufficient notice. Refusing to grant a short adjournment, without assigning any reason, cannot be said to be justified in the facts

of the present case. It is not understood that why the Assessing officer was in such a haste to decide the matter without affording the assessee-appellant a reasonable opportunity of hearing.

5. Besides this, it is a matter of fact that the assessee-appellant had also appraised the assessing officer that the appeals of the assessee for the previous years (which related to the same issue which is involved in the present assessment year 2013-14) were pending adjudication before the first appellate authority in which hearing had concluded and the orders were expected soon. Even such ground was not considered for grant of a short adjournment, which was refused by the assessing officer without assigning any reason.

6. In fact, it has been noticed by the writ Court that the first appellate authority had decided the appeals of the appellant/assessee for the previous assessment years vide order dated 19.02.2015 and set aside the demand raised by

the Assessing Officer. After noticing the same, even though the writ Court observed that “In all fairness it could have awaited the decision of the appellate authority for some reasonable time”, yet it refused to interfere with the order of the Assessing Officer. We agree with the finding recorded by the Writ Court that the Assessing Officer ought to have awaited the decision of the appellate authority for some reasonable time. We are also of the opinion that the Assessing Officer proceeded to decide the matter in an undue haste without affording the appellant adequate opportunity of hearing before passing the order dated 13.02.2015, which would amount to violation of principles of natural justice. We are thus of the view that dismissal of the writ petitions on the ground of availability of alternative remedy was not justified.

7. As such, we *set aside the order dated 13.02.2015 passed by the Assessing Officer and allow the*

writ petitions as well as these appeals. The matter is remitted back to the assessing officer for passing fresh orders in accordance with law, after giving adequate opportunity of hearing to the appellant.

8. Learned counsel for the parties agree that the appellant shall appear before the respondent-The Deputy Commissioner of Commercial Taxes on 06.04.2015 at 11.00 a.m., on which date the respondent may hear the assessee/appellant or adjourn the matter for hearing on some other suitable date and decide the matter on merits afresh. The learned counsel for the appellant agrees that no further notice need be given by the assessing officer for appearance of the appellant.

Sd/-
JUDGE

Sd/-
JUDGE

TL