IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.16324/2015
MP.Nos.1 and 2/2015

M/s.Rajkumar Impex Private Limited
by its Authorised Signatory, Chennai-18 Petitioner

Vs

The Assistant Commissioner (CT)
Kotturpuram Assessment Circle,
Chennai-28 Respondent

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, for the relief as stated therein.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mr.S.Kanmani Annamalai, AGP(T)

ORDER

This Writ Petition is filed to issue a Writ of Certiorarified Mandamus, to call for the records, pertaining to the assessment proceedings in CST.No.1011292/2011-2012, dated 28.01.2015 and to quash the same and as illegal, constitutional direct the respondent to lift the Bank attachment and refund the amount received from Bank by such illegal attachment and pass fresh assessment order as per law by verification of the documents and export invoices of the petitioner for the year 2011-2012 after giving an opportunity of personal hearing.

2. The case of the Petitioner is that the Petitioner is engaged in the business of import and export of cashew nuts. In the course of the said business, for the assessment year 2011-12, the petitioner has filed monthly returns under the CST Act and collected 2% tax for the interstate sales of cashew nuts to the registered dealers and also collected 5% tax for the interstate sales to the unregistered dealers. The Petitioner has paid the taxes collected for the interstate sales and also claimed exemption for the export sales for the year 2011-12. While so, the Respondent issued the pre-assessment notice, dated 28.10.2014, proposing to levy tax under the said Act for the interstate sales, not covered by C-Forms at 4% and 5% (after 11.7.2011) ans also the sales covered by C-Form at 2% and disallowing the exemption claimed on

the export sales for the year 2011-2012 and levied tax at 5% on such export sales. After receiving the said pre-assessment notice, the Petitioner sent a letter dated 12.11.2014 to the Respondent, stating that the export sales are exempted from tax and the Petitioner would produce all the required export documents for the year 2011-2012 for verification, if called for. But, however, without considering the request for the year 2011-2012 for giving exemption to the export sales and without any verification of records, such as, purchase and sales invoices, bill of lading, shipping bill, packing list, the Respondent levied tax for the export sales and passed the impugned assessment order dated, 28.1.2015. Hence, this Writ Petition has been filed, for the reliefs as stated above.

2. This Court heard the learned counsel on either and considered their submissions and perused the materials available on record.

3. The issue is in two folds, viz. (1) Production of C-Form declarations relating to interstate transactions and (2) export related transactions. After issuance of pre-assessment notice dated 28.10.2014, the Petitioner has produced necessary C-Forms, so as to prove his claim relating to interstate transactions. With regard to the export sales, the Petitioner has sought for time by letter dated, 12.11.2014, for filing necessary documents, such as, realization statements from the Banks, along with copies of bills of lading and shipping bills, packing lists, etc., which was received by the respondent on 13.11.2014. But, in the impugned assessment order dated 28.01.2015, it is stated that the Petitioner has not submitted any objections against the proposal of disallowing the claim of exemption for export sales, which is contrary to the truth. The request of the Petitioner for production of documents relating to export transactions, so as to claim exemption relating to export sales, was also not considered. According to the petitioner, 95% of the sales are export sales and the Respondent ought to have called for necessary documents in respect of the export sales and had the petitioner was given an opportunity to produce all the required documents, the Petitioner would have furnished the same, relating to export sales to prove their claim for the year 2011-2012, but, however, such an opportunity was not given to the Petitioner. This act of the Respondent is nothing but violation of principles of natural justice. Hence, considering all these aspects, the Petitioner can be afforded an opportunity, so as to produce all the required documents relating to export sales for the year 2011-2012 and suitable directions can be issued to the Respondent.

4. In such view of the matter, the impugned assessment order is set aside and the matter is remitted back to the Respondent. The Petitioner is directed to produce all the required documents, within two weeks from the date of receipt of a copy of this order, so as to prove their claim relating to export sales for the year 2011-2012. On such production, the Respondent shall consider the same and pass appropriate orders, on merits and in

accordance with law, after giving an opportunity of personal hearing to the Petitioner, within a period of six weeks from the date of receipt of the documents received from the Petitioner as directed by this order. In the mean while, the Respondent shall lift the Bank attachment of the Petitioner's Bank forthwith, so as to enable them to operate their account.

5. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MPs are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

Srcm

To:

The Assistant Commissioner (CT), Kotturpuram Assessment Circle, Chennai-28.

+1 cc to the Special Govt. Pleader, sr.41533
+1 cc to Mr.C.Baktha Siromoni, Advocate, sr.41843

WP.No.16324/2015

ug(co)
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