IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.20290 of 2015 &
M.P.Nos.1 of 2015

M/s.Kaleesuwari Refinery Private Limited
Rep by its Director
No.53, Rajasekaran Street
Mylapore , Chennai - 600 004

.. Petitioner

v.

1 The Union of India
Rep by its Secretary Ministry of Finance
North Block, New Delhi

2 The State of Tamil Nadu
Rep by its Secretary
CT & RE Department
Fort St. George Chennai-2

3 The State of Kerala
Rep by its Secretary to Taxes Department
Government Secretariat
Thiruvananthapuram, Kerala

4 The Deputy Commissioner(CT)-II
Large Tax Payers Unit, Chennai

5 The Assistant Commissioner(CT)(FAC)
Washermenpet II Assessment Circle
Chennai 81

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorari, calling for the records of the 4th respondent in his proceedings in CST 89092/2012-2013 quash the assessment order dated 28.5.2015 passed therein.

For petitioner : Mr.R.L.Ramani, Sr. Counsel for Mr.B.Raveendran

For respondents : S.Manoharan Sundaram, Addl. Govt. Pleader

ORDER

The petitioner has filed the above writ petition to issue a writ of certiorari to call for the records of the 4th respondent relating to the proceedings dated 28.5.2015 for the assessment year 2012-13 and to quash the same.

2.1 Petitioner company is engaged in the manufacture of edible oil, registered on the file of the 4th respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006, Central Sales Tax Act, 1956 and registered under the Companies Act, 1956. The petitioner effects purchases of edible oil locally as well as through import and in turn effect local sales, interstate sales, exports, stock transfer and consignment transfers in the other states. The petitioner states that its branches at Kerala are located at Palakad, Trivandrum and Calicut. During the assessment year 2012-13, the petitioner reported a total and taxable turnover of Rs.490,32,35,573/- and Rs.63,13,49,293/- under the CST act. In reporting the above turnover, the petitioner claimed concessional rate of tax at 2% on their interstate sales against production of C declaration forms. The petitioner also claimed exemption on their stock transfer to its branches in other states. With reference to its branches at Palakad, Trivandrum and Calicut in Kerala, the petitioner claimed exemption on stock transfer to the tune of Rs.91,02,94,770/-. With effect from 1.11.2011, the Commissioner of Commercial Taxes, State of Kerala issued a circular No.16/2011, by which, all dealers moving goods into and out of the State of Kerala had to declare the transaction details through online by electronic filing of a declaration in Form 8F and the printout of the e-token generated by the system should accompany the consignment along with other statutory documents at the border check post. The said regulation could be complied with by either the dealer or the transporter. In the case of the petitioner, in most instances, the petitioner had themselves generated declaration in Form 8F and in some cases the transport was directed to generate the declaration and carry the e-token for production at the border check post.

2.2 While so, the petitioner received a notice dated 7.1.2014, from the 5th respondent stating that the report received from the Assistant commissioner (CT), Kerala revealed that the petitioner had not declared the transaction details in Form 8F in respect of a large number of consignments at the border check posts at Kerala which leads to a suspicion on the stock transfers effected from Chennai to Kerala. Therefore, the 5th respondent proposed to revoke exemption allowed on the entire stock transfer of Rs.91,02,94,770/- and levy tax at 5% treating them as outright interstate sales. The petitioner filed their objections stating that in most cases, the stock transfer have been effected complying with the filing of form 8F declarations and in some cases due to lack of time the transporter might have failed to comply with the mandatory filing of Form 8F. The petitioner further submitted that the goods have been physically delivered at Kerala and sold locally and taxes paid in the State of Kerala. In order to consider the claim of exemption on stock transfer, the authorities in Tamil Nadu should be guided only by the provisions of the CST Act and TNVAT Act and not by any circular issued by the State of Kerala. In response to the notice issued by the Assistant Commissioner (Assessment), Special Circle, Palakad, the petitioner's branch at Palakkad to produce all documents relating to movement of goods from Tamil Nadu to Kerala for the period 2011-12, 2012-13 and 2013-14, the petitioner's representative at Kerala appeared before the said authority in the presence of the officers of the interstate Investigation Cell, Tamil Nadu, wherein, all the relevant documents were verified , but, no defects were noticed. However, the 5th respondent passed an order dated 21.4.2014 confirming his proposals to disallow the claim of exemption on stock transfer without any reference to his notice dated 7.1.2014 and the objections filed by the petitioner. In the said order the 5th respondent disallowed the claim of exemption on the stock transfer value of Rs.31,28,00,522/- as not accompanied with Form 8F, apart from levying penalty.

2.3 The petitioner filed an application dated 12.5.2014 to rectify the error apparent on the face of the record and pass fresh order so as to enable the petitioner to seek appropriate remedy, but no order came to be passed. Hence, the petitioner challenged the said assessment order dated 21.4.2014, before this court in W.P.No 21095 of 2014. This court set aside the said assessment order and directed the petitioner to produce all the documents so as to claim the relief of stock transfer. Claiming that the petitioner not produced the required documents, the 4th respondent passed the impugned order dated 28.5.2015 and hence, the petitioner is before this court.

3. Learned Senior Counsel appearing for the petitioner submitted that the petitioner is having all the relevant documents, as submitted before the Assistant Commissioner (CT), Washermanpet II Assessment Circle, Chennai. The Deputy Commissioner (CT)-II instead of considering the same, simply rejected the claim of the petitioner, in spite of production of all the documents as directed by this court in W.P.Nos.21094 and 21095 of 2014. Hence, there is no justifiable reason for denial by the Deputy Commissioner (CT)-II towards the claim made in respect of the stock transfer. The learned Senior Counsel seeks one more opportunity for production of documents to the 4th respondent.

4. The learned Additional Government Pleader on the other hand submitted that the petitioner only produced certain c-forms and not all the documents as directed by this court and seeks to dismiss the writ petition.

5. Heard both sides.

6. This is the second round of litigation. Earlier, in W.P.Nos. 21094 & 21095 of 2014, the primary contention of the petitioner was that the stocks transferred to their own branches in Kerala, had been taken to be inter-state sales and the total and taxable turnover determined, though the petitioner had produced a bunch of invoices raised in Kerala and the turnover details. According to the petitioner, tax has also been paid in Form 8 under the Kerala VAT Act. This court, while setting aside the impugned orders in the said writ petitions, directed petitioner to produce all the documents including the invoices raised in Kerala, proof of payment under the Kerala VAT Act and the certificates issued by the Assistant Commissioner (Assessment), Palakkad Special Circle. As directed, the petitioner, instead of producing the entire materials only produced the monthly returns filed by them before the Kerala Authorities to the Assistant Commissioner (CT), Washermanpet II Assessment Circle, Chennai, the 5th respondent herein along with the annual returns as proof of tax having been paid. Thereafter, since the jurisdiction is vested with the Deputy Commissioner (CT)-II, the Deputy Commissioner issued a notice to furnish the necessary documents. Accordingly, the petitioner produced the same documents as produced before the Assistant Commissioner (CT), Washermanpet II Assessment Circle. Not satisfied with the said documents produced by the petitioner, stating that the documents filed by the petitioner are irrelevant, the 4th respondent has disallowed the claim of exemption on stock transfer on the ground that the documents related to the consignments were not produced. On the other hand, the learned Senior Counsel submitted that the documents are already produced and the petitioner even now ready to produce the same, if an opportunity is provided. The issue of stock transfer and sufferance of taxes are to be proved by documents only. Hence, to give quietus to the issue, this court is of the view that yet another opportunity shall be provided to the petitioner.

7. Hence, the impugned order dated 28.05.2015 is set aside and the matter is remitted back to the 4th respondent for passing orders afresh. The petitioner is permitted to produce all the stock transfer related documents, check post partaiculars and the details of payments made in respect of the assessments completed by the Kerala authorities, along with tax payment certificates related to the year 2012-13, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the 4th respondent is directed to consider the same and pass appropriate orders afresh, after affording an opportunity of personal hearing to the petitioner, within a period of four weeks thereafter. If any of

the conditions are not complied, it is open to the 4th respondent to pass appropriate order on merits.

The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

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To

1 The Secretary
Union of India
Ministry of Finance
North Block, New Delhi

2 The Secretary
CT & RE Department
Fort St. George Chennai

3 The Secretary to Taxes Department
State of Kerala
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Thiruvananthapuram, Kerala

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Washermenpet II Assessment Circle
Chennai 81

+1 cc to Mr.B.Raveendran Advocate sr.51486

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