IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3845 of 2015
And
M.P.No.1 of 2015

M/s.Lenovo India (P) Ltd.,
Rep. by Director - Legal
and Company Secretary. ... Petitioner

Vs.

The Assistant Commissioner (CT)
Mylapore Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in CST/838585/2011-12 and quash the order dated 28.11.2014 passed therein.

For Petitioner : M/s.RL.Ramani
Senior Counsel
for M/s.L.Murali Krishnan

For Respondent : Mr.ANR.Jayapratap
Additional Government Pleader (Taxes)

O R D E R

Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Government Pleader. With the consent of either side, this writ petition is taken up for final disposal at the admission stage itself.

2.The petitioner has filed this writ petition seeking issuance of Certiorari to call for the records of the respondent in CST/838585/2011-12 and quash the order dated 28.11.2014 passed therein.

3.The petitioner received notice dated 30.04.2014 which was issued after the surprise inspection conducted by the Enforcement Wing Officials on the place of business between 07.10.2013 to 27.02.2014. Certain defects were noted during inspection and based on that the Assessment Officer has stated that 'C' Forms had not been filed and there is difference in the invoice of stock transfer. The petitioner filed their objections on 27.05.2014. Yet, another notice was served on the petitioner on 31.07.2014 which was received by the petitioner on 18.08.2014, wherein, it has been stated that the dealers have filed form 'F' which is mandatory and other relevant documents for a turnover of Rs.333,07,44,986/- which have been verified and found to be in order and accepted for exemption. This exemption is claimed on stock transfer. However, the authority has rejected the remaining turnover of Rs.6,87,460/- as the dealers have not filed the form 'F' and the same has been assessed to tax at 14.5% [Commodity code 301].

4.The petitioner having received this notice, did not respond to the same as the petitioner had the benefit of exemption for the major portion of the amount. The authority while passing the impugned order dated 28.11.2014 for the assessment year 2011-12 has ignored the exemption claimed on stock transfer for the aforesaid amount and proceeded to levy tax on the entire amount and the entire liability has been foisted on the petitioner which is illegal and the authority has not take into account the exemption granted in the notice dated 31.07.2014.

5.The respondent could not refute the contention raised by the petitioner. The impugned order clearly show that the notice dated 31.07.2014 has not only been referred to mainly in the impugned order but also exemption claimed on stock transfer has not been taken into account while foisting tax liability on the petitioner. Hence, I have no other option except to set aside the impugned order and remit the matter to the authority concerned. The authority concerned shall take into account the exemption granted in the notice dated 31.07.2014 and pass fresh orders on merits and in accordance with law.

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

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1.The Assistant Commissioner (CT)
Mylapore Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

1 cc to Special Government Pleader, Sr. 8248
1 cc to Mr.L. Muralikrishnan, Advocate, Sr. 8225

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CTK (CO)
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