IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3846 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 Certiorarified Mandamus to call for the records of the respondent in CST/838585/2012-13 and quash the order dated 28.11.2014 passed therein and further direct the second respondent to decide the issue in regard to the eligibility of the petitioner to avail of the benefit under Section 6-A of the CST Act, 1956 in the light of the law laid down by the Supreme Court of India in the case of M/s.Ashok Leyland Ltd. Vs. State of Tamil Nadu reported in 134 STC 473.

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 Certiorarified Mandamus to call for the records of the respondent in CST/838585/2012-13 and quash the order dated 28.11.2014 passed therein and further direct the second respondent to decide the issue in regard to the eligibility of the petitioner to avail of the benefit under Section 6-A of the CST Act, 1956 in the light of the law laid down by the Supreme Court of India in the case of M/s.Ashok Leyland Ltd. Vs. State of Tamil Nadu reported in 134 STC 473.

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, pointing out certain defects. Yet, another notice was served on the petitioner on 13.06.2014 wherein, it has been stated that the dealers have filed form 'F' for a turnover of Rs.131,35,62,423/- 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.442,95,12,991/- as the dealers have not filed the form 'F' and the same has been assessed to tax at 14.5%.

4.The petitioner having received this notice filed their objections on 03.09.2014. The authority while passing the impugned order dated 28.11.2014 for the assessment year 2012-13 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.

5.With regard to the balance amount, the petitioner filed form 'F' which has not been taken into account and the same has not been considered by the authority. The petitioner in letter dated 03.09.2014 has stated that they have filed declaration form for the balance amount and the same has not been considered by the Authority and a proposal to levy tax at 14.5% at stock transfer proceedings for non-submission of declaration in form 'F' may be dropped. The assessing Officer by the impugned order dated 28.11.2014 has passed an order even without reference to the letter dated 03.09.2014 along with the form 'F' submitted by the petitioner. Copy of the letter delivery book dated 15.09.2014 and 29.05.2014 is produced before this Court. Unfortunately, the entire amount of tax have been levied.

6.Hence, the impugned order is set aside. The petitioner shall be given a personal hearing and the authority shall take into account the additional objections, if any to be filed by the petitioner. After affording an opportunity of personal hearing to the petitioner and considering the additional objections, if any, filed by the petitioner, the respondent shall pass orders on merits and in accordance with law. Petitioner shall appear before the authority for personal hearing on 16.03.2015.

7.The writ petition is disposed of with the above observations. 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 Mr.L. Muralikrishnan, Advocate sr. 8223
1 cc to Special Government Pleader, sr. (Taxes), Sr. 8248

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CTK (CO)
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