IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6975 of 2015

M/s. Lenovo India (P) Ltd
222, T.T.K.road
Alwarpet, Chennai-600 018
rep by Director-Legal and Company Secretary
.. Petitioner

Vs.

The Assistant Commissioner(CT)
Mylapore Assessment Circle
Chennai-28
... Respondent

prayer:- Writ 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/838585/2013-14 and quash the order dated 31.12.2014 passed therein and further direct the respondent to follow the provisions of Sec.22 to 27 of the TNVAT Act,2006 for the purpose of assessment/reassessment of the petitioner's turnover and pass any further orders.

For Petitioner : Ms.Hema Muralikrishnan

For Respondents : Mr.ANR.Jayapratap, AGP(T)

ORDER

Petitioners have come forward with the aforesaid prayer.

2. Petitioner is a dealer in laptops, desktop computers, mobile phones and their accessories and a registered dealer on the files of the respondent under the Provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act, 2006) and the Central Sales Tax Act, 1956 (hereinafter referred to as CST Act, 1956) and has been duly filing its monthly returns. On 07.10.2013 Enforcement officers conducted VAT audit till 27.02.2014 and recorded statement from the petitioner's authorized representative. On 30.04.2014 the respondent issued notice to the petitioner alleging that the petitioner was not entitled to exemption on the stock transfer of goods effected by it to its branches and and proposing to treat the stock transfer turnover

from 01.04.2013 to 30.11.2013 as an interstate sale of goods based on the VAT audit report. The petitioner filed its objections on 27.05.2014. Thereafter nothing was heard from the respondent and hence the petitioner was of the view that the notice was dropped by virtue of assessment order accepting the returns deemed to have been passed on 31.10.2014 as per Sec.22(2) of the TNVAT Act, 2006. The impugned order was passed on 31.12.2014 disallowing exemption on stock transfer and making an assessment for the period upto 27.02.2014. Challenging the impugned order, the petitioner is before this court.

3. Learned counsel for the petitioner submitted that only provision permitting assessment for a part of the year on the basis of returns is provisional assessment under Section 25 of the TNVAT Act,2006 but the same is impermissible after the expiry of the assessment year as held by this court in the case of State of Tamilnadu v. Wander Ltd, 79 STC 421. Further, the impugned order is based on an unauthorized VAT audit report of the enforcement wing officers as the audit was not authorized by the Commissioner under Section 64(4) of the TNVAT Act, 2006. Therefore, the impugned order is beyond the provisions of the Act and liable to be quashed.

4. Heard both sides.

5. Learned counsel for the petitioner relied on the judgment of this court reported in State of Tamilnadu v. Wander Ltd, 79 STC 421, wherein this court has held as follows:

> "9. We therefore hold that the impugned order made in TNGST No.180826/89-90 dated 28th April, 1990 is vitiated by errors of law apparent on the face of facts and liable to be quashed. We also accept the contention of the learned counsel for the petitioner and the ratio of Mahendrakumar Ishwarlal and company v Deputy Commercial Tax Officer (1971) 28 STC 551 (Mad) that it is not open to the Revenue to pass a provisional order of assessment after the end of the assessment year. Therefore, there is no point in directing the petitioners to seek the statutory remedies available under the Act. Accordingly, the writ petition is allowed and the impugned order is quashed and there will be no order as to costs."

The above said order is squarely applicable to the facts of the present case. In view of the same, this writ petition is allowed. No costs. Connected miscellaneous petition is closed. The order of the respondent in CST/838585/2013-14 dated 31.12.2014 is quashed. As far as the mandamus sought for by the petitioner, it is for the petitioner to agitate the same before the appropriate forum in accordance with law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpr

To
The Assistant Commissioner (CT)
Mylapore Assessment Circle
Chennai-28

1 cc to Spl.Government Pleader(Taxes),Sr.No.14985
1 cc to Ms.Hema Muralikrishnan ,Advocate, SR.No.14576

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ggk(co)
pmk.10.4.2015