IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.3.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.8471 and 8472 of 2015
and
M.P.Nos.1 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
No.46, Greenways Road,
Chennai 600 008. ... Respondent

Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari call for the records of the respondent herein in CST/838585/2008-09 and quash the orders dated 31.7.2014 and 31.12.2014 passed therein.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondents: Mr.Kanmani Annamalai, AGP(T)

COMMON ORDER

Petitioner has come forward with the aforesaid prayer.

2. The case of the petitioner is that the respondent issued notice dated 30.04.2014 proposing to disallow exemption on stock transfer turnover to the tune of Rs.28.76 lakhs on the basis of VAT Audit report. The petitioner has submitted objections on 27.05.2014 and thereafter, original assessment order dated 31.07.2014 was passed by the respondent disallowing exemption on stock transfer turnover of Rs.1.38 Crores and also levying a tax at 3% on inter-State sales supported by "C"declaration forms when the rate of tax is 2%.

3. According to the petitioner, the respondent did not have the power to make any original assessment after 30.06.2012. The petitioner, inadvertently, filed a petition for rectification under

WEB COPY

Section 84 on 19.09.2014 and the same is pending. According to the petitioner, there was yet another notice on similar line for the five assessment years and the petitioner made a written request on 31.12.2014 seeking extension of time till 31st January 2015 for filing objection. According to the petitioner, without communicating the rejection of the request, the impugned order has been passed, wherein it has been stated that their request for extension of time has been rejected.

4. According to the petitioner, the impugned order is based on unauthorized VAT audit report of the Enforcement Wing Officers as the audit was not authorized by the Commissioner u/s.64(4) of the Tamilnadu Value Added Act, 2006. The petitioner contended that the impugned order passed not accepting the petitioner's request for extension of time and and disallowing the exemption on stock transfer is not correct and the petitioner was not given any opportunity to putforth their submissions and the petitioner is agreeable to deposit 5% of the amount determined without prejudice to the contentions of the petitioner. In support of her contention, the learned counsel for the petitioner also drew the attention of this court to the decision dated 25.09.2001 in W.P.Nos.8766 to 8768 of 2000 which reads as follows:

> " Though we are not quite satisfied with the petitioner's contention that reasonable opportunity was denied has been established in this case, having regard to the clarification said to have been issued by the Commissioner, which the Government counsel says is still operative, the failure on the part of the assessing officer to specify the further time allowed to the assessee to file its reply after it was furnished the copy of documents, must in the circumstances be held to have vitiated the order. The assessee sought for four weeks time after the documents were made available. The assessment that it must file the objections within two weeks or in lesser period of time.
>
> 2. The circular referred to relied upon by the assessees is the one issued by way of clarification by the Commissioner on 05.04.1984. That circular states that the Assessing Officers to pass orders on requests for time from assessee on spot and communicate to them then and there. It also states that the Assessing Officers feel that the dealers have already been given reasonable opportunities and sufficient time, there is no reason for granting further time, the order rejecting the request shall be passed and communicated to the dealers then and there. If the Assessing Officers decide to comply with the request, the date fixed for further hearing or extension of time given shall similarly intimated. Here no date was given to the petitioners and the petitioners after their request for extension and they were not made aware that the time granted was only

WEB COPY

two weeks, the order made by the officer at the end of the period while leaving the assessees with a impression that by reason of the period of time sought by them not having been rejected, that period could be regarded by them as has been granted, has therefore, to be set aside with a view to give the assessee the opportunity to give explanation to the demand, based on slips that had been recovered and on the basis of which a finding of suppression was accorded, which in turn led to a substantial addition to the turnover of the assessees, liability to pay additional tax. We therefore, set aside the order of the Tribunal, and of the authorities, which were questioned before it and direct the assessing officer to receive the objection for the proposed assessment, if such objection is filed within a period of two weeks from today and thereafter make the assessment. Writ Petitions are disposed of accordingly."

5. The respondent is unable to refute the contentions of the petitioner.

6. Though the petitioner has raised in their objection to the notice dated 30.04.2014, the impugned order has been issued for assessment year 2008-2009, and that there is a deemed assessment. According to the provisions of Section 22 article 27, the authority is empowered to issue notice for revision within a period of 6 years.

7. I find much force in the contention of the petitioner that no opportunity has been given to the petitioner and the decision of this court dated 25.09.2001 supports the contention of the petitioner. Hence, I set aside the order dated 31.07.2014 and the matter is remitted to the authority concerned and the authority is directed to pass final orders on merits and in accordance with law after giving opportunity to the petitioner. The petitioner is directed to deposit 5% of the amount determined as agreed by the petitioner, without prejudice to the contentions of the parties, and shall appear in person and file their objection on 30.04.2015.

8. After affording an opportunity of being heard to the petitioner, the authority shall pass orders within a period of four weeks thereafter. If the petitioner fails to avail the opportunity of being heard for any reason whatsoever, it is open to the authority to record the non-appearance of the petitioner and proceed in accordance with law.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. The writ petitions are disposed of accordingly. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Mylapore Assessment Circle
No.46, Greenways Road, Chennai 600 008.

+1 cc to Spl.Government Pleader,SR.16863.

+2 cc's to Mr.L.Muralikrishnan, Advocate,SR.16964.

vsn(co)
krd 8/4

W.P.No.8471 & 8472 of 2015

सत्यमेव जयते
WEB COPY