IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.15760 & 15761 of 2016 &
WMP Nos.13679 & 13680 of 2016

M/s.Escorts Ltd
Rep by its Asst.Manager
Finance Mr.D.K. Sharma .. Petitioner in both W.Ps.

Vs

The Assistant Commissioner (CT)
Kodambakkam Assessment Circle
PAPJM Building, 4th Floor
No.1 Greams Road, Chennai-600 006.
.. Respondent in both W.Ps.

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondent in CST.802474/ 2009-10 & CST.802474/ 2011-12 and quash the orders dt.14.03.2016 & 15.03.2016 respectively, passed therein in so far as the levy of tax @ 12.5%/ 14.5% on interstate sales is concerned and further direct the respondent to take into consideration the tax paid by the petitioner through availment of input Tax Credit in its monthly returns and adjust the same towards the tax liability of the petitioner.

For Petitioner : Mr.B.Raveendran

For Respondents : Mr.S.Kanmani Annamalai
Additional Govt. Pleader

C O M M O N O R D E R

Heard Mr.B.Raveendran, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice on behalf of respondent. With the consent of the learned counsel on either side, the Writ Petitions are taken up for final disposal.

2.This is the second time, the petitioner is before this Court, pointing out that the Assessing Officer has proceeded to make the assessment without affording an opportunity of personal hearing.

3.Earlier, the petitioner had filed a Writ Petition in W.P.No.6638 of 2015 for issuance of a writ of certiorarified mandamus to quash the order passed by the first respondent dated 30.01.2015 and to direct the first respondent to afford the petitioner an opportunity of personal hearing, so as to enable them to submit the available 'C' Forms to show that the entire CST liability has been paid by way of adjustment against the input tax credit. When the case was heard, it was fairly conceded by the learned Additional Government Pleader (Taxes) that in terms of Section 22(4) of the Tamil Nadu Value Added Act, 2006 (the 'Act'), it is mandatory that the procedure contemplated therein should be followed. Therefore, the said Writ Petition was allowed and the Assessment Order dated 30.01.2015, was quashed with a direction to the first respondent to decide the matter afresh, after giving a reasonable opportunity to the petitioner.

4.Thereafter, a notice was issued to the petitioner dated 22.01.2016, stating that they were directed to appear for personal hearing on 14.08.2015, but, they sought for adjournment and accordingly, the case was adjourned to 27.08.2015. Once again, an adjournment was sought for by letter dated 01.09.2015 and the personal hearing was adjourned to 11.09.2015. However, it appears that the petitioner's authorised representative did not turn up for the personal hearing and therefore, the Assessing Officer namely the first respondent proceeded to assess the Sales Turnover of the petitioner not covered with 'C' Forms and determined the total and taxable turnover at Rs.9,01,06,300/-. Apart from that the first respondent also proposed to levy penalty under section 9(2) of the CST Act read with section 27(3) of the TNVAT Act, 2006.

5.The petitioner was granted an opportunity to submit their objections. The said opportunity was availed by the petitioner and they have submitted their objections on 08.03.2016. The first respondent thereafter proceeded to pass the impugned order and from a perusal of the impugned order, it is seen that the Assessing Officer has referred to the petitioner's objection. However, it has proceeded to confirm the total and taxable turnover and accordingly, re-opened the matter by dropping the proposal to levy penalty.

6.It is true that the petitioner was afforded an opportunity of personal hearing. But, though the matter was adjourned on three occasions, the petitioner did not avail the same. In any event, when an objection was submitted by the petitioner, it would have been proper for the Assessing Officer to give one more opportunity, because in the objection dated 08.03.2016, the petitioner had stated that their operations are spread over in many States and they have Inter-State Sales in many States and have to procure 'C' Forms from many customers spread in many States and that has caused substantial delay and therefore they requested for condonation of delay in submission of the 'C' Forms and assess their turnover and for passing necessary orders.

7.The learned Senior Counsel appearing for the petitioner submitted that the petitioner is in possession C-Forms and prays for one more opportunity and that would be the final opportunity, so as to enable the petitioner to produce the records to enable the assessing authority to consider the same.

8.In the light of the above, the impugned order passed by the first respondent cannot be faulted. However, since the petitioner has pleaded certain operational difficulties in securing 'C' Forms immediately, the petitioner is granted two months time to produce the remaining 'C' Forms and it is open to the petitioner to approach the first respondent along with the 'C' Forms and submit a request to revise the assessment. In the event, the petitioner complies with the same, the first respondent shall consider the 'C' Forms produced and proceed in accordance with law.

The Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1 The Assistant Commissioner (CT)
Kodambakkam Assessment Circle,
PAJM Building, 4th Floor,
No.1, Greens Road, Chennai 6.

1 cc to Mr.B.Raveendran, Advocate, sr.29715
1 cc to Special Government Pleader, sr.29571

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lrs co
kra 14.06.2016