IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2017

CORAM

THE HON'BLE Mr. JUSTICE K.RAVICHANDRABAABU

W.P.No.9603 of 2017
and
W.M.P.No.10562 of 2017

M/s. Larsen & Toubro Limited,
Chennai Regional Office,
TC1 Building, 2nd Floor,
979, Mount Poonamallee road,
Manapakkam, Chennai 600 089 ... Petitioner

Vs.

The Deputy Commissioner (CT)-II,
LTU, Mashall Road, Chennai -8 ... Respondent

This writ petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, call for the records of the impugned assessment order in CST 31722/2015-2016 dated 15.03.2017 from the files of the first respondent herein and quash the same.

For Petitioner : Mrs. Aparna Nandakumar
For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

The Petitioner is aggrieved against the order of assessment dated 15.03.2017 passed under the Central Sales Tax Act, 1956, in respect of the assessment year 2015-2016.

2. Mr. K.Venkatesh, learned Government Advocate takes notice for the respondent and by consent, the main writ petition itself is taken up for final disposal.

3. The Assessing Authority passed the impugned order of assessment and fixed the tax liability as Rs.65,87,31,772/- after determining the total turnover and giving adjustment of ITC and tax already paid by the petitioner. The Assessing Officer arrived at such conclusion after considering the 'C' forms submitted by the petitioner in respect of part of the turnover and also by considering that the petitioner has failed to furnish the balance certificates, even though, sufficient

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time was given for them to submit the same.

4. The learned counsel for the petitioner submitted that the collection of 'C' forms from the dealers could not be done within the time stipulated by the Assessing Authority after issuing the notice of proposal, as it involves great difficulty and consumption of lot of time. Therefore, she submitted that the petitioner, though sought for three to six months time for producing those balance forms, was, however, not granted with such time. Therefore, it is the contention of the learned counsel that if sufficient time is given to the petitioner, they would produce the 'C' forms and satisfy the Assessing Authority as to how the conclusion now arrived is factually and arithmetically wrong. She further submitted that the petitioner has collected some more 'C' forms representing turnover worth about Rs.10 crores, after filing the writ petition, and therefore, it would show that the petitioner is making all efforts bonafidely to secure the remaining 'C' forms.

5. On the other hand, learned Government Advocate, by inviting this Court's attention to the impugned orders of assessment, pointed out that the petitioner was given sufficient time and they failed to utilise such opportunity to produce the balance 'C' forms. Therefore, he contended that the Assessing Officer cannot be found fault with.

6. Heard both sides.

7. It is seen that before passing the impugned order of assessment, the Assessing Officer issued a pre-assessment notice dated 05.01.2017. The proposed turnover in the said notice towards interstate sales against 'C' forms was indicated as Rs.5,18,67,09,707/- at 14.5%, by alleging that 'C' forms were not filed within three months as required under Rule 12 (7) of the Central Sales Tax (Registration and Turnover) Rules, 1957. The Petitioner was given 15 days time to file their objections. On receipt of such notice, the petitioner through their reply dated 16.01.2017 sought sufficient time for production of declaration forms by expressing that the assessment for the dealers in some States, from whom, the petitioner has to collect the declaration forms was not initiated from 2009 to 2010 onwards and therefore, they find it very difficult to get declaration forms for the recent years. In response to the said reply, the Assessing Officer granted time upto 30.01.2017. Thus, in effect, the Assessing Officer has extended the time only by another 15 days. The petitioner through their communication dated 30.01.2017 again sought further three months time by explaining as to why such long time is required. The Assessing Officer, in response to such request, granted time upto 20.02.2017. Therefore, it is evident that the petitioner was given another 20 days time only.

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8. It is seen that the quantum of tax arrived in the assessment order is because of non furnishing of 'C' forms by the petitioner, in respect of certain part of the turnover towards interstate sales. It is not the case of the petitioner that they do not have such 'C' forms. On the other hand, it is their contention that they are unable to get such 'C' forms from the other end dealers and also explained as to why such inability exists even after grant of such extension of time. There is no quarrel to the settled position that the benefit to the assessee cannot be denied merely because the 'C' forms are filed belatedly. As the petitioner before this Court has stated that they would certainly produce the balance 'C' forms before the Assessing Authority if sufficient time is given to them, I am of the view that the extension of time granted twice by the Assessing Officer, only by 15 or 20 days may not be a sufficient time for producing the 'C' forms, considering the volume of transaction involved in this case. Therefore, I find that the petitioner can be given one more opportunity for production of such balance 'C' forms. At the same time, considering the quantum of tax payable by the petitioner and the fact that the Assessing Officer has, in fact, extended the time to the petitioner twice, I am of the view that the petitioner should be put on some terms for remitting the matter for redoing the assessment.

9. Accordingly, the writ petition is allowed and the impugned order of assessment is set aside and the matter is remitted back to the Assessing Officer for redoing of assessment once again subject to the following terms and conditions.

a) The petitioner shall pay 20% of the tax demand before the Assessing Officer within a period of two weeks from the date of the receipt of a copy of this order.
b) The petitioner shall furnish the balance 'C' forms before the Assessing Officer within a period of two months from the date of receipt of a copy of this order.
c) On receipt of the payment of 20% of the tax demand, the Assessing Officer will reopen the assessment and allow the petitioner to furnish the balance 'C' forms within the time stipulated by this Court as stated supra.
d) On furnishing the balance 'C' forms within the time stipulated supra, the Assessing Officer shall consider the matter once again and pass a fresh order of assessment after giving due opportunity of hearing to the petitioner.
e) Such exercise shall be done by the Assessing Officer within a period of four weeks from the date of completion of furnishing the 'C' forms by the petitioner.

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10. It is made clear, that this Court is not expressing any view on merits of the assessment as it is for the Assessing Authority to consider and decide. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(csv)

True Copy

Sub-Assistant Registrar

vsi/rkp

To

The Deputy Commissioner (CT)-II,
LTU, Mashall Road,
Chennai -8

+1 cc to M/s.Aparna Nandakumar Advocate sr 23954
+1 cc to Special Government Pleader Taxes sr 24099

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