IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.2266 of 2017
And
W.M.P.No.2234 of 2017

M/s.The Highland Produce Company Ltd.,
Represented by its GM, Finance ... Petitioner

Vs.

The Asst. Commissioner (CT)(FAC)
Egmore Assessment Circle,
No.88, Mayor Ramanathan Road,
Chennai – 600 031. ... 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 the impugned Order CST/23975/2011-12 dated 28.12.2016, quash the same as it is violative of principles of natural justice, travelling beyond the scope of pre-assessment notice and mechanically passed without considering any of the documents produced by the Petitioner in response to the pre-assessment notice.

For Petitioner : Mr.V.S.Manoj
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

1.Issue Notice. Mr.S.Kanmani Annamalai, learned Additional

Government Pleader, accepts notice on behalf of the respondent. With the consent of the learned counsels for parties, the writ petition is taken up for hearing and final disposal.

2.The sole ground on which the petitioner assails the impugned assessment order dated 28.12.2016 is that, the scope of the pre-assessment notice dated 09.11.2016, was enlarged by the respondent, while making the assessment.

3.It is the contention of the learned counsel for the petitioner that the pre-assessment notice dated 09.11.2016 proceeded on the basis that the petitioner had to be denied concessional rate of tax on a turnover amounting to Rs.12,31,00,771/-, on account of alleged failure to file supportive declarations in Form – C.

4.It is the petitioner's case that a reply dated 22.11.2016 was filed, along with, which, apart from 'C' Forms, Form – F qua, stock transfers made was also filed. The petitioner is aggrieved by the fact that while adjustments were made, qua, 'C' Forms furnished, the respondent has made a disallowance, and thus, added back to the taxable turnover amounts, which were not subject matter of the pre-assessment notice. Insofar as the stock transfer is concerned, a perusal of the impugned order would show that benefit has been given to the petitioner to the extent of only Rs.99,62,678/-, while denying exemption to the extent of Rs.12,80,53,992/-.

5.Learned counsel for the petitioner says that the petitioner never claimed stock transfer, as indicated in the impugned assessment order, to the extent of Rs.13,80,16,670/-. Therefore, the balance amount, on which, higher rate of tax is imposed is unsustainable.

5.1.Similarly, insofar as dis-allowance of sales made under Section 5(1) of the CST Act, 1956, is concerned, the petitioner says that, since, no opportunity of personal hearing was given, the relevant documents, though available, could not be produced before the respondent.

6.Having regard to aforesaid facts and circumstances, I have put to Mr.Annamalai that given the fact that the assessment order passed in the matter went beyond what was proposed in the pre-assessment notice could it be sustained.

6.1.Learned counsel fairly submitted that the assessment order had gone beyond the scope of the pre-assessment notice insofar issue of stock transfer and export sales was concerned.

7.Accordingly, the impugned order is set aside to the extent of tax imposed qua amounts added back on account of stock transfer and export sales qua, which exemption was, purportedly, claimed under Section 5(1) of the CST Act, 1956. In other words, the respondent will redo the assessment with regard to these two aspects of the matter and pending the said exercise, the recovery of tax will remain stayed to the extent of a cumulative sum of Rs.1,86,27,434/-.

8.Learned counsel for the petitioner says that the remaining tax has already been paid.

8.1.The said statement is taken on record.

9.Needless to say, the aforementioned exercise will be conducted by the respondent with due expedition, though, not later than, eight weeks from today, after affording a personal hearing in the matter to the petitioner.

10.The writ petition is disposed of, in terms of the aforementioned directions. Consequently, the connected pending application is also closed. However, there shall be no order as to costs.

31.01.2017

pri
Index: Yes/ No
Internet: Yes/ No

Note: Issue order copy on 02.02.2017

To

The Asst. Commissioner (CT)(FAC)
Egmore Assessment Circle,
No.88, Mayor Ramanathan Road,
Chennai – 600 031.

RAJIV SHAKDHER,J.
pri

W.P.No.2266 of 2017
And
W.M.P.No.2234 of 2017

31.01.2017