IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.02.2017

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.2830 of 2017

and WMP No.2762 of 2017

M/s.Sony India (P) Ltd.,
Centennial Square,
No.6A, Dr.Ambedhkar Road,
Kodambakkam,
Chennai-600 024 rep. by its
Authorised Signatory
S. Balaji .. Petitioner

vs.

The Deputy Commissioner [CT]-1,
LTU Assessment Circle, Large Tax Payers Unit,
5th Floor, Dugar Towers,
No.34, Marshall Road, Egmore,
Chennai-600 008. .. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records of the respondent in the impugned order in CST No.635517/2015-16, dated 09.12.2016, and quash the same, and further direct the respondent to pass a fresh order accepting all the declarations in Form-C, Form-F, and clear copy of High Sea Sale documents in the possession of the petitioner, or to issue any other appropriate writ or order as this Hon'ble Court may deem fit and proper to the facts and circumstances of the case.

* * *

For Petitioner : Mr.R.Sridhar

For Respondent : Mr.K.Venkatesh,
Government Advocate

ORDER

1. Notice in this writ petition was issued on 06.02.2017. Mr.K.Venkatsh, learned Government Advocate, accepted notice on behalf of the respondents on that date.

1.1. Learned counsel for the petitioner had taken time to obtain instructions in the matter.

2. Mr.K.Venkatesh, says that no counter need be filed, in view of the limited plea raised by the petitioner before the Court, which is that an opportunity be given, to file declarations in Form C and F and to produce the relevant Bills of Lading, as well.

2.1. Learned counsel says that those aspects could be examined by the respondent/assessing officer, if, a petition is moved, in that behalf under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short the 2006 Act).

3. To be noted, the tax demanded in respect of sale of goods covered by C Form and those, which are not covered by C Form, is a sum of Rs.1,29,463/- and 3,91,964/- respectively.

3.1. In so far as the exemptions claimed qua stock transfer is concerned, tax demanded is Rs.2,00,79,418/-.

3.2. Likewise, as regards, high sea sales, which have been disallowed, tax demanded is Rs.22,99,324/-.

4. The petitioner says that it has, in its possession, the relevant declarations in Form C and F, which can be produced before the respondent/assessing officer.

4.1. As regards, high sea sales, which have been disallowed, counsel for the petitioner has drawn my attention to the impugned order, wherein, it is noted that the respondent proceeded to disallow the exemptions sought in respect of high sea sales, only on the ground that, the bills of ladding were not "visible".

5. I have heard the learned counsel for the parties and perused the record.

5.1. Though, Mr.K.Venkatesh, has submitted that the petition under Section 84 of the 2006 Act, can be preferred, in my view, that may not be the proper remedy in the given facts and circumstances of the case.

5.2. Having said so, it is not even Mr.K.Venkatesh's case that declarations in Form C and F cannot be filed, at this stage. The provisions of Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957, are quite explicit on this aspect of the matter.

5.3. As indicated above, the high sea sales, even, as per the respondent/assessing officer were disallowed only on the ground that the bills of lading filed by the petitioner, were not "visible", by which, I would understand that they were, perhaps, illegible.

6. In these circumstances, the impugned order is set aside, with liberty to the respondent/assessing officer to redo the assessment.

6.1. For this purpose, the petitioner's authorised representative will appear before the respondent/assessing officer, on 28.02.2017 at 11.00 a.m.

6.2. The petitioner, via its representative, will present before the respondent, in original, the declarations in Form C and F, and also the relevant Bills of Lading.

6.3. In case, the said date is not convenient to the respondent/assessing officer, he shall be at liberty to fix another date, which will be proximate to the date fixed by the Court.

6.4. Needless to say, before passing a fresh order, the respondent/assessing officer will afford a personal hearing to the authorised representative of the petitioner.

6.5. It is made clear that the respondent/assessing officer will pass a speaking order; a copy of which, will be given to the authorised representative of the petitioner.

7. The captioned writ petition is closed in the aforesaid terms. Resultantly, pending application shall stand closed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

The Deputy Commissioner [CT]-1,
LTU Assessment Circle,
Large Tax Payers Unit,
5th Floor, Dugar Towers,
No.34, Marshall Road, Egmore,
Chennai-600 008.

+1cc to Mr.R. Sridhar, Advocate, Sr. 7654

+1cc to the Special Govt. Pleader (Taxes),
High Court Chennai SR. 7831

W.P.No.2830 of 2017

NMI(CO)
VR(17/02/2017)