IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2017

CORAM

THE HONOURABLE Mr.JUSTICE RAJIV SHAKDHER

W.P.No.1991 of 2017
and W.M.P.No.1992 of 2017

M/s.Lincoln Electric Company India Pvt. Ltd.,
Rep. by its Finance Controller,
Ram Kumar Moningi,
1st Floor, Sun Plaza,
No.1, GN Chetty Road,
T.Nagar, Chennai-17. ...Petitioner

Vs

The Commercial Tax Officer,
T.Nagar, Assessment Circle,
No.46, Greenways Road,
III Floor, R.A.Puram,
Chennai-28. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating to the Assessment Order in CST/865848/2014-15 dated 28.11.2016 and the consequential Revision Order CST/865848/2014-15 dated 26.12.2016 passed by the respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.Kanmani Annamalai, AGP

O R D E R

1. Issue notice. Mr.Kanmani Annamalai, learned Additional Government Pleader, accepts notice on behalf of the respondent.

2. With the consent of counsels for parties, the Writ Petition is taken up for final hearing and disposal.

3. The grievance of the petitioner, is that, the order passed in revision, which is dated 26.12.2016, enhances its tax liability from Rs.48,70,875/- to Rs.1,43,92,804/- without prior notice and due opportunity.

3.1. In other words, the petitioner's case is that no notice of enhancement of tax liability was given.

4. A perusal of the averments made in paragraph No.11 of the affidavit and the earlier Assessment Order dated 28.11.2016, would show that the demand, in the sum of Rs.48,70,875/- was pivoted, inter alia on the following four grounds:

i. Non-submission of C forms for Inter-state sales of a value of Rs.7,69,13,563/-.

ii. Export sale exemption disallowed - Rs.2,51,55,426/-.

iii. EOU Sales exemption disallowed - Rs.1,25,61,831/-

iv. Sales Return exemption disallowed - Rs.17,70,203/-

5. A perusal of the order dated 26.12.2016, would show that, two new issues were included, which were not subject matter of the order dated 28.11.2016. The first issue pertains to Input Tax Credit [ITC] reversal , under Section 19(5)(c) of the Tamil Nadu Value Added Tax Act, 2006 [in short "the Act"]. The second issue pertained to reversal made under Section 19(2)(v) of the Act. Clearly, there has been a breach of principles of natural justice as these issues were not referred to in the assessment order dated 28.11.2016.

6. Mr.Kanmani Annamalai, learned Additional Government Pleader appears for the respondent concedes that the second order dealt with the issues, which were not part of the earlier order dated 28.11.2016.

7. In these circumstances, the impugned orders dated 28.11.2016 and 26.12.2016 are set aside. The respondent is directed to redo the assessment, after affording due opportunity to the petitioner. The petitioner, is also, given liberty to furnish in original all documents, including additional original declarations made in Form-C,H,F and I. The respondent shall consider the same and afford personal hearing to the petitioner. The respondent will pass as indicated, a fresh order which shall be a speaking order. There shall, however, be no order as to costs. Resultantly, the pending Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

The Commercial Tax Officer,
T.Nagar, Assessment Circle,
No.46, Greenways Road,
III Floor, R.A.Puram,
Chennai-28.

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.5053
+1cc to the Government Pleader, S.R.No.5262

RK(CO)
RS(17/02/2017)

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and
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