IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.03.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.No.4612 of 2018
and W.M.P.No.5680 of 2018

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Nisha Hemal Gogri,
No.197, 1st Floor, Sydenhams Road,
Appa Rao Garden, Choolai,
Chennai - 600 112. .. Petitioner

Vs.

The Assistant Commissioner (CT),
Choolai Assessment Circle,
2nd Floor, Palaniappa Maligai,
No.10, Greams Road,
Chennai - 600 006. .. Respondent

Petition filed under Article 226 of the Constitution of India to issue Writs of Certiorarified mandamus calling for the records of the respondent in CST.12090763/2015-16 dated 25.01.2018 and quash the same as illegal, against the provisions of the act and principles of natural justice and fair play and direct the respondent to consider and allow the claim of exemption on high sea sales covered by documents and concessional rate of tax on interstate sale covered by C Form.

For Petitioner : Mr.P.Prithvi Chopda

For Respondent : Mr.M.Hariharan,
Additional Government Pleader (Tax)

O R D E R

The petitioner has filed the above Writ Petitions to issue writs of Certiorarified mandamus calling for the records of the respondent dated 25.01.2018 and quash the same and direct the respondent to consider and allow the claim of exemption on high sea sales covered by documents and concessional rate of tax on interstate sale covered by C Form.

2.It is the case of the petitioner that is a Dealer and filed monthly return under TNVAT and CST Act disclosing all its purchases and sales, including sales made to SEZ unit and high sea sales during the year. The respondent issued a revised notice dated 15.12.2017, proposing to levy tax only on the reported taxable turnover of Rs.7,77,77,925/- and not on total turnover of Rs.7,91,18,948/-, which is inclusive of exempted turnover. In pursuance to the same, the petitioner filed reply enclosing declaration in Form C and I for gross value of Rs.7,84,66,298/-. The respondent passed the impugned order dated 25.01.2018 allowing concessional rate of tax on interstate sale covered with C Forms and exemption on interstate sale covered by I Form and also levied tax on high sea sale under Section 5(2) instead of exemption and higher rate of tax on balance interstate sale not covered by C Form without there being any proposal to levy tax in respect of exempted sales. Further, the petitioner contended that if there was such proposal, the petitioner also produced the documents, but the respondent refused to receive the same.

3.Mr.M.Hariharan, learned Additional Government Pleader (Tax) appearing for the respondent submitted that an opportunity may be given to the petitioner to submit all the necessary documents and a direction may be given to the respondent to redo the assessment.

4.Having regard to the submissions made by the learned counsel on either side, since the petitioner was not in a position to produce all the necessary documents before the respondent, which led to the passing of the impugned order, in the interest of justice, the petitioner can be given an opportunity to produce all the documents available with them and in such circumstances, the respondent can be directed to decide the matter afresh. For the reasons stated above, the impugned order dated 25.01.2018 is set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is directed to produce all the documents available with them within two weeks from the date of receipt of a copy of this order and on production of the same, the respondent is directed to decide the matter afresh, after giving due opportunity of personal hearing to the petitioner.

5.With these observations, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Choolai Assessment Circle,
2nd Floor, Palaniappa Maligai,
No.10, Greams Road,
Chennai - 600 006.

+1cc to Mr.T.PRAMOD KUMAR, Advocate, S.R.No. 15822

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NRK(CO)
TR(13/03/2018)