IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :11.06.2019
CORAM
THE HON'BLE MR.JUSTICE M.SUNDAR
W.P.No.1172 of 2019
and
W.M.P.No.1330 of 2019

M/s.Konica Minolta Business Solutions India Pvt.Ltd.,
Rep.by its Authorised Signatory Mr.JPR Charles
No.1/138, Kamaraj Salai, Mathur,
Manali - 600 068. ..Petitioner

vs

The Assistant Commissioner(ST)
Manali Assessment Circle,
No.5/79, 5th Main Road,
K.K.D.Nagar, Kodungaiyur,
Chennai - 600 118. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in TIN:33071087423/2011-12 quash the impugned proceedings dated 30.11.2018 being contrary to the direction issued by this Hon'ble Court in W.P.Nos.12331 & 12332 of 2014 dated 30.06.2018 and the Advance Ruling issued in ACAAR.No.122/2013-14 dated 02.09.2014.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Ms.G.Dhanamadhri
Government Advocate

O R D E R

Mr.V.Sundareswaran, learned counsel on record for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate on behalf of the sole respondent are before this Court.

2. This writ petition is listed under the caption 'FOR EXTENSION OF INTERIM ORDERS' in the list today. Be that as it may, with the consent of learned counsel on both sides, the main writ petition itself is taken up and the same is being disposed of.

3. An Assessment order dated 30.11.2018 being TIN 33071087423/2011-12 made by the sole respondent ['impugned order' for the sake of brevity, clarity and convenience] is called in question in the instant writ petition.

4. Short facts that are imperative for appreciating this order are as follows:

a) Writ petitioner is a registered dealer on the file of the respondent under the 'Central Sales Tax Act, 1956' ['CST Act' for the sake of brevity]

b) Writ petitioner is a dealer in Information Technology Products namely 'Multifunction Printers' having the additional functions of Photo copying, Scanning, Fax etc.,

c) Aforesaid 'Multifunction Printers' are imported from Japan and are sold locally inside the State of Tamilnadu and as part of inter-state sales also. These goods are referred to as 'Multi Functional Devices' and shall be referred to as 'MFD' [for the sake of brevity, clarity and convenience]

d) MFD goods are classified as one falling under Customs Tariff with reference to Hormonised Numeric System 8471, which is equivalent to all the First Schedule adumbration qua CST Act, which reads as follows:

'68(22). Computer systems and peripherals, Electronic diaries

(a) Computer systems, Peripherals and parts.

(b) Electronic diaries'

e) To be noted, this is the second round of litigation. In the earlier round of litigation, the respondent made proceedings dated 09.04.2014 being TIN 33071087423/2011-12 and the same was assailed by the writ petitioner in this Hon'ble Court by way of writ petitions being W.P.Nos.12331 and 12332 of 2014.

f) To be noted, in the aforesaid proceedings dated 09.04.2014, the respondent had held that there shall be levy and collection of tax on MFDs at a rate, which will be much more than what would be applicable with regard to the aforesaid clarification i.e., more than 4% and 5% from the reckoning dates thereunder.

g) Pending aforesaid writ petition, the authority for clarification and Advance Ruling passed an order dated 02.09.2014 being ACAAR No.122/2013-14(Acts Cell-II/66912014), wherein and whereby, the Advance Ruling Authority, clearly held that the MFDs, which are subject matters of the instant writ petition, are liable to tax at the rate of 5% and an Entry in Serial No.68 in Part-B of First Schedule read with Item 22(a) in the List of Information Technology Products by the Government vide Notification No.II(1)/CTR/(a-6)/2007 in G.O.Ms.No.3, CT & R(B1) Department dated 1st January 2007. To be noted, the Advance Ruling Authority passed this order, following the judgments of Hon'ble Supreme Court and this Court.

h) In the light of the aforesaid order of Advance Ruling Authority dated 02.09.2014, the aforesaid writ petitions filed by the writ petitioner came to be disposed of on 30.06.2016 by a Hon'ble Single Judge of this Court. Vide this order, Hon'ble Single Judge, directed the respondents to redo the assessment after taking into consideration the aforesaid order of Advance Ruling Authority. Thereafter, the respondent embarked upon the exercise of redoing the aforesaid order of this Court and that culminated in the impugned order i.e., impugned assessment order.

i) Assailing the impugned assessment order, inter alia on the ground that it is not in tandem with the clarification / order of Advance Ruling authority, instant writ petition has been filed.

5. Learned counsel for writ petitioner submitted that the impugned order has been passed, by misreading and misconstruing, the order / clarification by the Advance Ruling Authority. It is the stated position and emphatic submission of learned counsel for writ petitioner that vide the impugned order, respondent has made non-existent distinction between old / used MFDs and new MFDs. In other words, it is the specific submission of learned counsel for writ petitioner that there is no such distinction between old / used MFDs and new MFDs. To put it differently, irrespective of whether MFDs are old / used or new, the same will fall under the same Entry namely Serial No.68 in Part-B of First Schedule read with Item 22(a) in the List of Information Technology Products.

6. Per contra, learned counsel for writ petitioner submitted that the authority has proceeded on the basis of Advance Ruling Authority, as the same refers only to MFDs, which are old / used. It was also submitted that the orders of this Court had directed the respondent to redo the assessment in accordance with the order dated 02.09.2014 made by the Advance Ruling Authority and that order was passed at the instance of another assessee i.e., not the writ petitioner.

7. This Court has carefully considered the rival submissions.

8. The classification of MFDs is settled for good. There is no disputation before this Court that the aforesaid clarification / order of the Advance Ruling Authority dated 02.09.2014 is now governing the field.

9. If that be the case, in the absence of any disputation that the relevant list i.e., the list of Information Technology products as notified by the Government vide Notification No.II (1) / CTR / (a-6) / 2007 in G.O.Ms.No.3, CT & R(B1) Department dated 1st January 2007, does not make any distinction between old / used and new products as far as MFDs are concerned, it follows as an inevitable and indisputable sequitur that the impugned order deserves to be set aside and therefore, the impugned order is set aside insofar as it is misread the clarification, Ruling of the Advance Ruling Authority dated 02.09.2014.

10. The respondent is directed to redo the assessment obviously in the light of the clarification / order of the Advance Ruling Authority dated 02.09.2014 bearing in mind that there is no distinction between old / used products and new products as far as MFDs, which find place in Entry namely Serial No.68 in Part-B of First Schedule read with Item 22(a) in the List of Information Technology Products are concerned.

11. The aforesaid exercise of redoing the assessment shall be commenced and completed within three months from the date of receipt of this order. Though obvious, it is made clear that the assessment shall be done in a manner known to law.

12. Writ Petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner(ST)
Manali Assessment Circle,
No.5/79, 5th Main Road,
K.K.D.Nagar, Kodungaiyur,
Chennai - 600 118.

W.P.No.1172 of 2019

ssd(co)
nr 15/07/2019