IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 23.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.20983 of 2008
and
M.P.No.1 of 2008

M/s.Kothari Industrial Corporation Ltd.,
Represented by its Senior General Manager,
Mr.G.Mohandas,
Having Office at
No.114, Mahatma Gandhi Salai,
Nungambakkam, Chennai - 600 034. ... Petitioner

Vs

1.The Assistant Commissioner (CT),
Fast Track Assessment Circle - III,
Greems Road - IV Floor,
Chennai - 600 006.

2.Southern Petrochemicals Industries
Corporation Limited,
Heavy Chemicals Division,
Guindy, Chennai - 600 032.

3.The Deputy Commissioner (CT) Appeals,
No.191, NSC Bose Road,
Chennai - 600 001.
R3 impleaded as per order dated 18.03.2011
in M.P.No.1 of 2009 in W.P.No.20983 of 2008
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the first respondent vide his proceedings C.S.T.No.24551/1988-89 dated 28.06.2002 and the same is confirmed by the proceedings of the 3rd respondent in his Application No.130 of 2002 and also the proceedings of the 1st respondent in CST/24551/1988-89 dated 26.06.2008, quash the same only in respect of the tax imposed on the petitioner for the chemical not covered by C-Forms and consequently direct the 1st respondent to collect the tax due of Rs.23,18,106/- as per Form 3 Assessment No.CST/24551 for the period 1988-89 from the 2nd respondent.

(Prayer amended as per order dated 18.03.2011 by MJJ MP.No.2 of 2009 in W.P.No.20983 of 2008.)

For Petitioner : Mr.T.Mahendran

For Respondents: Mr.Mohammed Shaffiq
Special Government Pleader
for R1 & R3
Mr.K.A.Parthasarathy for R2

O R D E R

The present writ petition has been filed challenging the assessment order for the year 1988-1989. The only ground raised by the petitioner is that they had sold their chemical unit to the 2nd respondent in the year 1987 itself and as such, the assessment for this chemical unit for the year 1988-1989, cannot be sustained.

2.The learned counsel for the 2nd respondent would submit that it is factually incorrect to state that the chemical unit of the petitioner has been transfered to the 2nd respondent in the year 1987 itself. The effective transfer took place only in October, 1988 and the actual sale deed was executed on 15.06.1989 and as such, they are not liable for the assessment year 1988-1989.

3.The learned counsel for the petitioner would submit that since the petitioner company has various units and were assessed together with various other units, they were unable to initially challenge the notice from the assessing officer and if an opportunity is given to them to establish that the chemical unit was already transfered by them, he would comply with such direction. In this connection, the petitioner also claims they have brought to the notice of the first respondent herein about the transfer, through a letter dated 07.08.2008.

4.Originally, such a letter was given only after the assessment order has been passed and as such, the assessing officer cannot be found fault with, for not considering the same. Nevertheless, in order to give an opportunity to the petitioner to put forth his plea before the authorities, it would be appropriate to remand back the matter to the 1st respondent for re-consideration. This Court is also of the view that when the 2nd respondent has denied their liability to pay entire tax for the assessment year 1988-1989, they should also be permitted to participate in the assessment proceedings.

5.In the light of the above observations, the assessment order of the 1st respondent in CST/24551/1988-89, dated 26.06.2008, is set aside and the matter is remanded back to the 1st respondent for re-consideration. The petitioner is at liberty to give his additional objection, within a period of 15 days from the date of receipt of copy of this order. The 2nd respondent is also granted liberty to file their objection along with any other document, which they seek to rely upon, within a period of 15 days from the date of receipt of copy of this order. The 1st respondent shall consider the same after giving due opportunity of personal hearing for both the petitioner as well as the 2nd respondent and pass appropriate order in accordance with law, preferably within a period of three months from the date of receipt of such objections.

6.With this observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (CT),
Fast Track Assessment Circle - III,
Greems Road - IV Floor,
Chennai - 600 006.

2.The Deputy Commissioner (CT) Appeals,
No.191, NSC Bose Road,
Chennai - 600 001.

+1cc to the Government Pleader Sr.63460
+1cc to Mr.T.Mahendran, Advocate Sr.63416
+1cc to Mr.N.Inbarajan, Advocate Sr.62972

W.P.No.20983 of 2008
and
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srg 12/09/2019