IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2019

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THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.30514 of 2004

Esjaypee Impex (P) Ltd.,
Rep.by its Managing Director
Mahendra Parmar ...Petitioner

Vs.

1. The State of Tamil Nadu,
   represented by the Secretary to Government,
   Department of Commercial Taxes and
   Religious Endowments,
   Fort St.George,
   Chennai-600008, Tamil Nadu

2. The Union of India
   represented by the Secretary,
   Ministry of Finance
   Department of Revenue,
   New Delhi

3. The Commercial Tax Officer,
   Sowcarpet-I Assmt.Circle,
   Chennai, Tamil Nadu

4. The State of Maharashtra
   Rep.by the Secretary to Government,
   Department of Revenue,
   Maharashtra

5. The Union Territory of Delhi
   Rep.by the Secretary to Government
   Department of Revenue,
   New Delhi.

6. The Union Territory of Pondicherry
   Rep.by the Secretary to Government
   Department of Revenue
   Pondicherry ...Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of

Certiorarified Mandamus, calling for the records of the impugned proceedings of the third respondent herein in CST:15756/2001-02 on his files, quash the said proceedings dated 30.09.2004 passed therein and further direct the third respondent to grant exemption in respect of transfer of stocks to the petitioenr's branches in the State of Maharashtra and Union Territories of Delhi and Pondichery under Sec.6-A of the CST Act, 1956 in the light of the law laid down by the Apex Court in the case of M/s.Ashok Leyland Ltd., reported in 134 STC 473.

For Petitioner:Mr.C.Subramanian for
M/s.Chandran Karuppiah
& Ramani Advocates

For Respondent:Mr.Hari Babu, AGP for R1 & R3
Mr.Madangopal Rao for R2
Mr.G.Djearany, GA for R6
No appearance for RR4 and 5

O R D E R

The petitioner seeks relief of certiorarified mandamus, quashing order dated 30.09.2004, passed by the 3rd respondent for the period 2001-02, in terms of the Central Sales Tax Act, 1956 (in short 'Act').

2.The petitioner is a dealer in poppy seeds, Star Aniseeds, dry ginger and other provisions. In its monthly returns for the period 2001-02 filed in terms of the Act, the petitioner had reflected several transactions as being stock transfers to its branches in Mumbai, Delhi and Pondicherry.

3. The Assessing Authorities/R3 issued a pre-assessment proposal dated 30.01.2004. According to R3, the transactions claimed to be stock transfers, were not so as and no statutory declaration Forms in Form F had been produced in support of such a claim. He thus proposed that exemption claimed on the transfers to branch offices would be disallowed in terms of Section 6(A) of the Act and the transactions assessed at 10% as inter-State sales along with penalty.

4. The petitioner filed a detailed reply dated 29.03.2004 explaining that the eight debit notes referred to in the pre-assessment notice covered transactions emanating from imports, cleared at the Mumbai port. Though, the orders for import had been placed in the name of the Chennai office, the goods had landed at the port at Mumbai, cleared and dispatched therefrom to the respective destinations, being Delhi, Mumbai and Pondichery branches. The petitioner had pointed out that the assessments of the branches at Delhi and Mumbai were still

pending at the time when the reply was filed. The petitioner also explained that the statutory Declarations in Form F that were required to be filed in support of the branch transfers had not been furnished by the respective branch offices, but other substantial evidences had been filed to support its claim such as stock book maintained at the Chennai office, Form XX delivery notes and lorry receipts. Moreover, the goods had never ever entered the State of Tamil Nadu and as such, the Assessing Officer could not, according to the petitioner, have assumed jurisdiction over the transactions in question.

5. In conclusion, the petitioner requested two months time for furnishing Form F declarations, CST assessment orders of the branches and other supporting documents to establish its claim of branch transfer. It also requested an opportunity of personal hearing prior to finalisation of proceedings.

6. Notwithstanding the response dated 29.03.2004, the Assessing Officer proceeded to pass the impugned order on 30.09.2004 confirming the assessment proposals. Personal hearing, as sought for, has also not been granted. It is in the aforesaid circumstances that the petitioner has approached this Court by way of the present writ petition.

7. In the case of Ashok Leyland Limited Vs. Union of India (UOI) and Others [(1997) 105 STC 152], a Division Bench of the Apex Court, after hearing an issue similar to the one before me now, had suggested the constitution of a Central mechanism to hear and adjudicate upon disputes that were of the natre of inter-State disputes. Pursuant to the suggestion made by the Division Bench, the Central mechanism has been constituted in terms of Section 19 of the Central Sales Tax Act, 1956.

8. However, I do not intend to relegate the petitioner before me to the appellate hierarchy for reason that the Assessing Officer has, admittedly, completed the impugned proceedings without an opportunity of personal hearing being afforded to the petitioner as specifically sought for by it. The petitioner has stated that the CST assessments of the branches in Mumbai and Delhi were pending finalsation. These orders would be relevant to decide the lis in question. Then again, the assessee should also, in all fairness, be granted sufficient opportunity to produce such contemporaneous documents as it might be in possession of, to establish its claim that the transactions in question are only branch transfers and nothing more.

9. This Court has been taking a consistent stand that a personal opportunity of hearing is part and parcel of the principles of natural justice and the head of the Commercial

Taxes Department, the Principle Commissioner and the Commissioner of Commercial Taxes has issued several circulars advising the Assessing Officers to ensure that the assessee is heard personally prior to finalisation of an assessment, irrespective of whether the assessee has sought such hearing or not; all the more, in a case of this nature where the assessee will have to establish, by way of evidence, its claim for exemption.

10. For the aforesaid reasons, the impugned order of assessment is set aside. The petitioner will appear before the 3rd respondent on Monday, the 23th of September, 2019 with all records in support of its stands. No further notice need be issued in this regard. After hearing the petitioner and considering any/all material circulated by it, an order of assessment shall be passed by the Assessing Officer, de novo, and in accordance with law on or before 31.10.2019.

11. This writ petition is disposed of in the above terms. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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Department of Commercial Taxes and
Religious Endowments,
Fort St.George,
Chennai-600008, Tamil Nadu

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6. The Secretary to Government
   Union Territory of Pondicherry
   Department of Revenue
   Pondicherry

+1 cc to Mr.*, Advocate, S.R.No.78783

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BR(CO)
SSM(20/09/2019)