IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.12634 to 12637 of 2015
and M.P.Nos.1 to 1 of 2015

The Southern Group of Industries (P) Ltd.,
rep by Mr.K.Sundar,
Accounts Manager - Authorised Signatory,
8, Kummalamman Koil Street,
Tondiarpet, Chennai - 600 081. ... Petitioner in all W.Ps

vs.

The Assistant Commissioner (CT),
Tondiarpet Assessment Circle,
Chennai - 600 081. ... Respondent in all W.Ps

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari calling for the records on the file of the respondent in CST No.74723/2010-11, CST No.74723/2011-12, CST No.74723/2012-13 and CST No.74723/2013-14 dated 20.02.2015 and quash the same.

For Petitioner : Mr.S.N.Kirubanandam
(in all W.Ps)

For Respondent : Mr.ANR.Jayaprathap,
(in all W.Ps) Govt. Advocate (CT)

C O M M O N O R D E R

These writ petitions have been filed challenging the impugned orders passed by the Assistant Commissioner (CT), Chennai in CST No.74723/2010-11, CST No.74723/2012-13, CST No.74723/2011-12 and CST No.74723/2013-14 dated 20.02.2015.

2. Mr.N.Kirubanandam, learned counsel appearing for the petitioner would submit that the petitioner is a private limited company registered under the provisions of Companies Act, 1956 and engaged in the manufacturing of zippers/zip fasteners and also an assessee on the file of the respondent both under TNVAT & CST Acts. The petitioner is the regular tax remitter in the respondent

assessment circle. While so, the Commissioner of Commercial Taxes in a letter No.VAT Cell/34256/2007 (VCC No.12340 DATED 17.09.2007, in a reply made to One Touch Solutions, has clarified that the sales made to Government Departments are taxable at 4% only. Being so, the petitioner relying on the said clarification charged tax only 4% and later 5% on the direct inter-state sales made to the Defence Departments. Therefore, when there is no irregularity in charging and collection of tax by the petitioner at 4% & 5% , the levy and collection of tax by the petitioner are in conformity with the reasons and objects of the union of India in extending various concessions, exemptions to Defence, Army and Navy etc. But the respondent issued a pre-assessment Notice dated 30.04.2014, calling upon the petitioner to file their objections. Pursuant thereto a reply notice was issued on 26.05.2014 explaining the transactions at the hands of the petitioner will attract tax only at 4% & 5% as per the clarification issued by the Commissioner of Commercial Taxes, since the petitioner supplied their goods to Government Departments.

3. Adding further, the learned counsel for the petitioner would submit that the respondent neither gives an opportunity of hearing nor applied their mind to the clarification issued by the Commissioner of Commercial Taxes. Therefore, the grievance of the petitioner is that when they have specifically in their letter dated 26.05.2015 requested the respondent department to offer an opportunity of hearing before passing any order of assessment to explain their stand, the respondent Department wrongly passed the impugned orders without affording any opportunities of hearing and therefore, there is violation of principles of natural justice. That apart, the impugned orders were passed without application of mind, since the respondent failed to look into various documents such as tender, purchase orders and invoices wherein the purchaser's name is clearly mentioned as Ministry of Defence, Government of India.

4. Mr.ANR.Jayaprathap, learned Government Advocate takes notice on behalf of the respondent.

5. As there was no reply with regard to the request made by the petitioner to afford an opportunity of personal hearing that there is a violation of principle of natural justice. That apart on a reading of the impugned orders, it shows that the petitioner will attract tax only at 4% and 5% as per the clarification issued by the Commissioner of Commercial Taxes as the petitioner supplied their goods to Government Department, therefore, as high lighted above on the short point that the principles of natural justice having been violated, the impugned orders are liable to be set aside and accordingly the same are set aside.

The writ petitions stand allowed, directing the respondent to afford reasonable opportunity of hearing to the petitioner and thereafter to pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsm

To

The Assistant Commissioner (CT),
Tondiarpet Assessment Circle,
Chennai - 600 081.

1 cc to Mr. S.N.Kirubanandam,Advocate, SR.No.23102
1 cc to SPL.Government Pleader,Sr.No23228

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SR(CO)
PMK.20.5.2015