IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.33649 to 33651 of 2015
and
M.P.Nos.1,1 and 1 of 2015

M/s.Hewlett Packard India Sales Private Limited rep. by its Zonal Manager .. Petitioner in all the W.Ps

Vs

The Deputy Commissioner (CT) IV (FAC),
Large Taxpayers Unit,
34 (Old No.123), Dugar Towers,
Marshall Road, Egmore,
Chennai - 8. .. Respondent in all the W.Ps

Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records of the respondent in TIN:33931502595/2006-07, 33931502595/2007-08 and 33931502595/2008-09 respectively and quash the orders dated 11.09.2015, 25.09.2015 and 25.09.2015 respectively passed therein.

For Petitioner : Ms.Hema Muralikrishnan
in all the W.Ps

For Respondent : Mr.S.Manoharan Sundaram,
Addl. Govt. Pleader (T)
in all the W.Ps

COMMON ORDER

Challenging the orders of the respondent dated 11.09.2015, 25.09.2015 and 25.09.2015 respectively in respect of the assessment years 2006-07, 2007-08 and 2008-09 respectively, the petitioner has filed these writ petitions.

2.The petitioner is a dealer in computers and its accessories and it is a registered dealer on the file of the respondent herein under the provisions of TNVAT Act, 2006 and CST Act, 1956. The petitioner's place of business was inspected by the enforcement wing officers on 25.05.2009 and based on their report, the respondent issued a notice dated 24.10.2011 stating that the petitioner was liable to pay tax at 12.5%, to which, the petitioner filed its reply on 12.12.2011. By order dated 18.12.2009 in W.P.Nos.25123, 25125 to 25132 of 2008, this Court granted interim injunction restraining recovery of tax in excess of 4%. Again, the petitioner's place of business was inspected by the enforcement wing officers in February, 2014 and on the basis of the subsequent inspection report, the respondent passed the impugned orders, levying 12.5% tax. Aggrieved against the same, these writ petitions have been filed.

3.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

4.The question involved in these writ petitions is whether the multifunction network printers are computer peripherals and they are to be taxed at the rate of 4% under Entry 68 Part B of First Schedule or at the rate of 12.5% under residuary entry of Entry 69 Part C of the First Schedule?

5.This issue had already been decided by the Division Bench of this Court in Canon India (P) Ltd., Vs. State of Tamil Nadu ((2015) 80 VST 483 (Mad)), wherein the Division Bench, after elaborate discussions, has considered that the products similar to that of the petitioner partake the character of peripheral of a computer and therefore classifiable under the entry taxable at 4%. Since the products of the petitioner naturally fall under Entry 68 Part B, it will attract levy of 4% tax instead of 12.5% tax under the residuary entry.

6.Without looking into the decided case, as referred to above, the respondent, despite the objections filed by the petitioner and ignoring the advance ruling in ACAAR No.122/2013-14 dated 02.09.2014 which clarifies that Digital Multifunction Devices are taxable under Entry 68 Part B of the First Schedule, passed the impugned orders. Hence the impugned orders are liable to be set aside and accordingly they are set aside. The writ petitions are allowed and and the matters are remitted back to the assessing authority for passing appropriate orders in the light of the orders passed by the Division Bench of this Court in Canon India (P) Ltd., Vs. State of Tamil Nadu ((2015) 80 VST 483 (Mad)). The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order after affording due opportunity of hearing to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

The Deputy Commissioner (CT)
IV (FAC),
Large Taxpayers Unit,
34 (Old No.123), Dugar Towers,
Marshall Road, Egmore,
Chennai - 8.

+1 cc to M/s.L.Muralikrishnan, Advocate, sr.59764
+1 cc to The Special Government Pleader,(Taxes),sr.59909

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kra 07.12.2015