IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.11240 and 11241 of 2015
and M.P.Nos.1 and 1 of 2015

M/s.Srinidhi Industries Limited,
New No.95, Old No.159, Krishna Talkies Road,
Erode - 638 003.
Represented by its Director Raghav Kanodia. .. Petitioner in both W.Ps

Vs

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.

2.The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Erode.

3.The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes and Registration Department,
Fort St. George, Chennai. .. Respondents in both W.Ps

Prayer in W.P.No.11240 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the proceedings of the 2nd respondent in TIN No.33962882743/2013-2014 dated 09.01.2015 and quash the same.

Prayer in W.P.No.11241 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the 2nd respondent from relying upon the circular in VAT Cell/41598 (VCC No.1113) dated 23.08.2007 issued by the 1st respondent and the consequential proceedings of the 2nd respondent in TIN No.33962882743/2013-2014 dated 09.01.2015 as the same is illegal and non-est in the eyes of law.

For Petitioner in both W.Ps. : Mr.S.Raveekumar

For Respondents in both W.Ps. : Mr.Manokarasundaram
Additional Government Pleader

COMMON ORDER

Heard Mr.S.Raveekumar, learned counsel appearing for the petitioner and Mr.Manokarasundaram, learned Additional Government Pleader appearing for the respondent and with their consent, these Writ Petitions were taken up for final disposal.

2.The petitioner has challenged the order of assessment under the provisions of the Tamil Nadu Value Added Tax, 2006 (TNVAT Act) for the assessment year 2013-2014. On a perusal of the impugned order of assessment, it is evidently clear that the Assessing Officer had accepted the plea of the petitioner and came to the conclusion that there is no dispute that “Wind Mill” is used for the production of “Electricity” and the “Electricity” is used in the manufacture of “Yarn” the taxable end product. However, the reason given for rejecting the petitioner's case and confirming the proposal in the notice dated 12.09.2013 is on the ground that the Commissioner has given a clarification dated 23.08.2007. On perusal of the said circular, it is seen that it was issued much prior to the insertion of Section 48(A) of the TNVAT Act. That apart, the said clarification was at the instance of the third party. Therefore, the conclusion arrived at by the second respondent stating that he is bound by the clarification dated 23.08.2007 cannot be countenanced. Hence, on the short ground, the petitioner is entitled to succeed. Accordingly, the writ petitions are allowed and the impugned order of assessment is set aside and the matter is remanded back to the second respondent for fresh consideration, who shall proceed to complete the assessment without reference to the clarification dated 23.08.2007 after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai.

2.The Assistant Commissioner (CT),
Nethaji Road Assessment Circle, Erode.

3.The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes and Registration Department,
Fort St. George, Chennai.

+1 cc to Special Government Pleader(Taxes) sr.37812
+1 cc to Mr.S.Raveekumar Advocate sr.37321

W.P.Nos.11240 and 11241 of 2015
and M.P.Nos.1 and 1 of 2015

aa26/07/2016