IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:23.06.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.30221 to 30224 of 2015 and
MP.Nos.1 to 1 of 2015

Om Electronics
Rep. by its Proprietor,
B.Manthiram
No.49, Justice Rathnavel Pandian Road,
Golden George Nagar, Nerkundram,
Chennai - 600 107. .. Petitioner in all WPs.

Vs.

Commercial Tax Officer,
Koyembedu Assessment Circle,
CMDA Administration Building
2nd Floor, Koyembedu,
Chennai 600 107 .. Respondents in all WPs.

Prayer in WP.30221/2015:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondent passed in TIN/33761342881/2011-12 dated 02.09.2015 and to quash impugned order of the respondent in so far assessing the sale of Luminous Brand UPS at the rate of tax of 14.5% and further direct the respondent to follow the order of the Appellate Authority in AP.No.373 of 2014 dated 13.04.2015 in the matter of Luminous Power Technologies Pvt. Ltd., Chennai in respect to assessment of Sale of Luminous Brand UPS.

Prayer in WP.30222/2015:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondent passed in TIN/33761342881/2012-13 dated 02.09.2015 and to quash impugned order of the respondent in so far assessing the sale of Luminous Brand UPS at the rate of tax of 14.5% and further direct the respondent to follow the order of the Appellate Authority in AP.No.373 of 2014 dated 13.04.2015 in the matter of Luminous Power Technologies Pvt. Ltd., Chennai in respect to assessment of Sale of Luminous Brand UPS.

Prayer in WP.30223/2015:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondent passed in

TIN/33761342881/2013-14 dated 16.09.2015 and to quash impugned order of the respondent in so far assessing the sale of Luminous Brand UPS at the rate of tax of14.5% and further direct the respondent to follow the order of the Appellate Authority in AP.No.373 of 2014 dated 13.04.2015 in the matter of Luminous Power Technologies Pvt. Ltd., Chennai in respect to assessment of Sale of Luminous Brand UPS.

Prayer in WP.30224/2015:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondent passed in TIN/33761342881/2014-15 dated 02.09.2015 and to quash impugned order of the respondent in so far assessing the sale of Luminous Brand UPS at the rate of tax of 14.5% and further direct the respondent to follow the order of the Appellate Authority in AP.No.373 of 2014 dated 13.04.2015 in the matter of Luminous Power Technologies Pvt. Ltd., Chennai in respect to assessment of Sale of Luminous Brand UPS.

For Petitioner : Mr.N.Murali
(in all WPs)

For Respondent : Mr.S.Kanmani Annamalai
(in all WPs) Additional Government Pleader

COMMON ORDER

Heard Mr.N.Murali, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents and with their consent, the Writ Petitions are taken up for final disposal.

2.The petitioner is a distributor for M/s.Luminous Power Technologies Private Limited (Luminous) Chennai for their products, namely Uninterrupted Power Supply Systems, (UPS) in Chennai District and in these writ petitions, the petitioner has challenged the order of assessment passed by the respondent for the years 2011-2012, 2012-2013, 2013-2014 and 2014 - 2015 under the Tamil Nadu Value Added Tax Act, 2006.

3.The only issue canvassed before this Court in these writ petitions pertain to the rate of tax chargeable on re-sale of UPS, Inverters etc. The petitioner relied upon an order passed by the Appellate Deputy Commissioner (CT), Chennai (East) dated 13.04.2015 in Appeal No.373 of 2014 (VAT). This appeal was filed by M/s.Luminous Power Technologies Private Limited, who are the manufacturers of the products. The appeal was in favour of the appellant/manufacturers whereby the Appellate Deputy Commissioner partly allowed the appeal and so far as the levy of tax at 12.5%/14.5% is concerned, it was set aside. When the petitioner placed reliance on the decision of the Appellate Authority before his Assessing Officer, the Assessing Officer in the impugned order stated that the decision is not final and it is open for the petitioner to file an appeal before the Sales Tax Appellate Tribunal as well as before this Court. In order to ascertain as to whether any appeal has been preferred against the order of the Appellate Deputy Commissioner dated 13.04.2015 in A.No.373 of 2014 (VAT), the matter was adjourned.

4.The learned Additional Government Pleader on instruction submitted that the the Department has filed an appeal along with an application to condone the delay and the delay has been condoned and the appeal would be numbered and listed before the Sales Tax Appellate Tribunal shortly.

5.In the light of the above fact, the Assessing Officer has to necessarily await the decision of the Tribunal. Therefore, these Writ Petitions are allowed and the impugned orders are set aside and the show cause notice issued to the petitioner stands restored and the respondent is directed to await the decision of the Appellate Tribunal in the appeal filed by the Revenue as against the order dated 13.04.2015 in A.No.373 of 2014 (VAT), which was filed by the petitioner/manufacturer. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

Commercial Tax Officer,
Koyembedu Assessment Circle,
CMDA Administration Building,
2nd Floor, Koyembedu,
Chennai 600 107.

+1cc to Special Government Pleader Sr.35443
+4cc to Mr.N.Murali, Advocate Sr.35100

W.P.Nos.30221 to 30224 of 2015

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srg 11/7/2016