IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 16.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.Nos.20319 to 20326 of 2016 (8 WPs.)
and WMP Nos.17454 to 17468 (15 WMPs.

M/s.Andavar Lathe Works,
Rep. by its Partner -
R.Shanmugasuandaram ... Petitioner in all WPS

-vs-

1. The State of Tamil Nadu,
Rep. by the Secretary,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai - 600 009.

2. The Commercial Tax Officer,
Sathy Road Assessment Circle,
Erode,
Erode District. ... Respondent in all WPs

W.P.No.20319 of 2016:-Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Declaration to declare Section 2(11) of the Tamilnadu Value Added Tax Act, 2006 as discriminatory and ultravires the Constitution of India and violative of Articles 14, 301, 303 and 304 of Part XIII of the Constitution of India, in so far as it postulates the condition of capital goods being used "in the State" for the purpose of levy of tax @ 4%.

Prayer in W.P.No.20320 to 20326/16:- Writ petition filed under Article 226 of the constitution of India praying to issue a writ of certiorari Calling for the records on the file of the 2nd respondent in its impugned proceedings made in CST No.707474/2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012- 2013, 2013-2014, 2014-2015 dated 20.05.2016 respectively quash the same

For Petitioners : Mrs.R.Hemalatha
in all W.Ps.

COMMON ORDER

[Order of the Court was made by S.MANIKUMAR, J.]

In W.P.No.20319 of 2016, the petitioner/assessee has sought for a declaration that Section 2(11) of the Tamilnadu Value Added Tax Act, 2006 is ultra vires and unconstitutional. Petitioners/assessees, in other writ petitions viz., W.P.Nos.20320 to 20326 of 2016, have challenged the consequential proceedings. All the writ petitions are taken up for final disposal, at the stage of admission itself.

2. Validity of Section 2(11) of the Tamilnadu Value Added Tax Act, 2006, has already been upheld by the Hon'ble Division Bench of this Court in W.P.Nos.37604 & 37605 of 2007 etc. batch dated 05.04.2016.

3. While, adverting to the validity of Section 2(11) of the Act and the challenge to the consequential proceedings, at paragraph No.82 of the aforesaid judgment, a Hon'ble Division Bench, held as follows:

"82. Therefore in fine, all the writ petitions are disposed of to the following effect:

(i) The challenge to the validity of Section 2(11) of the Tamil Nadu Value Added Tax Act, 2006, is rejected and the prayer of the writ petitioners for declaration that Section 2(11) is ultra vires and unconstitutional, is dismissed.

(ii) Since many of the writ petitions challenge not only the validity of Section 2(11), but also the individual orders of assessment, we give a time limit of 30 days for the assessees to file statutory appeals. The period of 30 days shall commence from the date of issue of a copy of this order.

(iii) Until the expiration of a period of 30 days from the date of issue of a copy of this order, the respondents shall not take coercive steps.

(iv) In respect of petitioners who deal with capital goods used in the State, but who are not extended the benefit of the concessional rate of tax, on account of a lack of proper understanding of the definition of the expression 'manufacture' appearing in Section 2(27), the appellate authority shall take note of the observations that we have made in paragraphs 74 to 77, while deciding their appeals.

(v) While dealing with the appeals of the petitioners, the Appellate Authorities shall note of the second proviso to Section 42(3).

All the writ petitions are disposed of to the above effect. There shall be no order as to costs. Consequently, all connected M.Ps., are closed."

4. In view of the decision stated supra, writ petition viz., W.P.No.20319 of 2016, filed for declaration that Section 2(11) of the Tamilnadu Value Added Tax Act, 2006, is ultra vires and unconstitutional, are dismissed. In respect of other writ petitions viz., W.P.Nos.20320 to 20326 of 2016, challenging the proceedings, they are disposed of on the same terms, as extracted supra. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary,
State of Tamil Nadu,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai - 600 009.

2. The Commercial Tax Officer,
Sathy Road Assessment Circle,
Erode,
Erode District.

1 cc to Spl.Government Pleader, (Taxes), Sr.33557

W.P.Nos.20319 to 20326 of 2016

SV (CO)
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