IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.35133 of 2013
and
M.P.No.1 of 2013

Tvl. Consolidated Engineering Services,
rep. by its Partner, Mrs.S.Geetha,
No.27, Kothavalchavadi Street,
Saidapet, Chennai - 600 015. ...Petitioner

Vs.

The Commercial Tax Officer,
Saidapet Assessment Circle,
No.3, Tank Square Street,
Saidapet, Chennai - 600 015. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records relating to the proceedings of the respondent in CST 732240/2008-09, dated 25.07.2013, and to quash the same as illegal, arbitrary, without jurisdiction and against the judgment reported in (2010) 28 VST 306 (Mad) in the case of (Technomed Electronics and another Vs. CTO, Thiruvanmiyur Assessment Circle, and another) and further to direct the respondent to grant the concessional rate of tax at 5 %.

For Petitioner : Mr.K.Soundarajan
For Respondent : Mr.S.Manoharan Sundaram
Additional Government Pleader

O R D E R

Heard Mr.K.Soundarajan, learned counsel appearing for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader for the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as, 'TNVAT Act') and Central Sales Tax Act 1956 has challenged the order of assessment passed under Section 88 (4) of the TNVAT Act.

3. It is not disputed by the learned Additional Government Pleader that the issue involved in this case, as to whether the petitioner is entitled to the concessional rate of tax under section 8 (5) of the Central Sales Tax Act, is squarely covered by the decision of this Court, in the case of (Technomed Electronics and another Vs. CTO, Thiruvanmiyur Assessment Circle, and another) reported in (2010) 28 VST 306 (Mad). In the said case, the circular issued by the Special Commissioner and Commissioner of Commercial Tax, dated 10.06.2002 was challenged, wherein, the Commissioner had directed that, in cases, where, notifications have been issued under Section 8 (5) of the Central Sales Tax Act, 1956 C/D form is essential. The learned Judge, after considering the matter elaborately, set aside the circular, and at this stage, it would be beneficial to refer to the operative portion of the order, which reads as follows:-

> "9. The respondents have not disputed the fact that the petitioners are registered dealers of the above said goods to educational institutions and hospitals. In view of the admission of the learned Government Advocate, the petitioners cannot be denied of the benefits of concessional rate of tax, on the sales of the above said instruments and equipments in the course of inter-state trade or commerce, as contemplated by Notification No.II (1) CT & RE/38/76 dated 20.12.1975. In the above circumstances, it is not necessary for the petitioners to produce 'C'/'D' Declaration Forms to claim the benefit of concessional rate of tax in the above said notification.
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> 10. It is also an admitted fact that no such condition has been imposed in the notification, dated 20.12.1975 that the registered dealers engaged in sale of the abovesaid goods, have to produce 'C'/'D' Forms for claiming concessional rate of tax. But by erroneous application of the amendment brought about by Section 8(5) of the Central Sales Tax Act, by Act 20/2002, with effect from 11.05.2002 to the petitioners, the department has proceeded to disallow the concessional rate of tax at 5% to the educational institutions.
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> 11. As rightly contended by the learned counsel for the petitioners, the amendment is not applicable to the sales effected by any registered dealer of scientific equipments

and instruments to educational institutions for use, in teaching science or to hospitals. Even after the amendment of Central Sales Tax Act on 11.05.2002, G.O.Ms.No.595, CT & RE, dated 15.04.1988 has not been rescinded and therefore, the petitioners would be entitled to the concessional rate of tax.

12. In view of the specific stand of the learned counsel for the respondents and considering the merits of the case, the circular memorandum, dated 10.06.2002 is liable to be set aside, insofar as the petitioners are concerned and accordingly, set aside. Consequently, the order, dated 31.03.2008 passed by the Commercial Tax Officer, Thiruvanmiyur Assessment Circle, disallowing the concessional rate of tax at 5% on the sales to educational institutions (impugned in W.P.No.16154 of 2008) is set aside.

13. In the result, the Writ Petitions are allowed as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed."

4. In the light of the above, the impugned order calls for interference, as the reasonings assigned by the respondent in the impugned order is incorrect. Accordingly, the writ petition is allowed and the impugned order is set aside, and the matter is remitted back to the respondent to take note of the decision rendered in the above referred case, and extend the concessional rate of tax to the petitioner, by redoing the assessment for the relevant year. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Saidapet Assessment Circle,
No.3, Tank Square Street,
Saidapet, Chennai - 600 015.

+2cc to Mr.K.Soundararajan, Advocate Sr.36971 , 37175

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msm[co]
srg 23/07/2016