IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.2070 of 2007 and W.M.P.No.2 of 2007

M/s. Cavincare Advertising(P)Ltd.,
(now known as M/s.Hemalatha
Enterprises Pvt.Ltd.,
No.57, Plot No.302, Ramakrishna Nagar,
Kamaraj Salai, Chennai-600 087. ... Petitioner

Vs.

1.The Special Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam, Chennai.

2. The Deputy Commercial Tax Officer,
Porur Assessment Circle,
Chennai-600 087. ...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Acts Cell-II/D.Dis/20226/2004, quash the Clarification dated 02.07.2004 issued therein and further direct the second respondent not to implement the Clarification dated 02.07.2004 which runs contrary to Sec.3-G of the TNGST Act.

For Petitioner : Mr. B.Raveendran
For Respondents : Mr. S.Kanmani Annamalai
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.B.Raveendran, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

2. The question, which falls for consideration is whether the petitioner is entitled to avail the concession under Section 3-G of the Tamil Nadu General Sales Tax (in short "TNGST Act"), which provides for payment of tax at compounded rate. The petitioner is carrying on bussiness of printing and

they exercised option for paying the tax at the compounded rate. The second respondent has issued the impugned notice dated 29.09.2006, stating that the petitioner is not entitled to avail the concession under Section 3-G of the TNGST Act, as they do not own any printing machinery in their place of business.

3. The petitioner is before this Court challenging the show cause notice stating that no useful purpose will be served by approaching the respondents, since there is a Clarification by the Special Commissioner/first respondent dated 02.07.2004, to the said effect. I find that the said Clarification was not at the instance of the petitioner, but it appears to have been at the request of some other dealer. That apart, the Assessing Officer is an independent authority and in the instant case, he has not referred to the Clarification. Therefore, he is expected to decide the case of the petitioner purely by interpreting statutory provisions. The petitioner's case is that the expression “Carries on the business of printing” does not mandate that the petitioner, should own a printing machinery in their place of business. This can be very well agitated before the Assessing Officer, since the impugned proceedings is only a show cause notice.

4. In the para wise comments given by the second respondent to the learned Special Government Pleader vide letter dated 14.02.2007, the stand taken in the impugned notice has been reiterated and there is no other fresh material on the interpretation, which the petitioner seeks to make.

5. In the light of the above, the writ petition is disposed of by directing the petitioner to file their objections to the impugned notice and the second respondent is directed to decide the matter uninfluenced by the Clarification dated 02.07.2004, and stirctly go by the statutory provisions and pass a speaking order on merits and in accordance with law after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

bri/abr

TO

1.The Special Commissioner & Commissioner,
of Commercial Taxes,
Ezhilagam, Chennai.

2. The Deputy Commercial Tax Officer,
Porur Assessment Circle,
Chennai-600 087.

+ 1 cc to Mr.B. Raveendran, Advocate Sr.74337
+ 1 cc to Special Government Pleader Sr.74456

W.P.No.2070 of 2007

NRI(CO)
EU(21/11/2017)