

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.09.2017

Coram:

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

W.P.No. 20778 of 2007

and

W.P.M.P.No.1 of 2007

M/s. Compact Systems (P) Ltd.
rep. by its Director R. Aravindan,
No.167, Eldams Road,
Chennai - 600 018.

...Petitioner

Versus

1. The Commissioner of Commercial Taxes
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Commercial Tax Officer,
Mylapore Assessment Circle,
II Floor, 46, Greenways Road,
Chennai - 600 028.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus calling for the records on the files of the second respondent in TNGST 0701384/2005-06 dated 30.04.2007 and quash the same as illegal and contrary to the specified entry under the First Schedule of TNGST Act and direct the second respondent not to levy higher rate of tax based on the clarification no.11/06 dated 13.01.2006.

For Petitioner : Mr. T. Pramodkumar Chopda

For Respondents : Mr. K. Venkatesh,
Government Advocate

O R D E R

Heard Mr. T. Pramodkumar Chopda, the learned counsel appearing for the petitioner and Mr. K. Venkatesh, the learned Government Advocate appearing on behalf of the respondents.

2. This Writ Petition has been filed by the petitioner, challenging the notice issued by the second respondent/Commercial Tax Officer/Assessing Officer dated 30.04.2007.

3. In the said notice, it has been stated that the petitioner has been assessed to tax under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred as "TNGST Act") for the Assessment Year 2005-2006, by an Assessment Order, dated 05.02.2007, by charging tax on sale of Inverters at 12%, and sale of Un-interrupted Power Supply System (UPS) at 4%. Referring to a clarification issued by the Commissioner of Commercial Taxes in favour of another dealer, dated 13.01.2006, bearing Clarification No.11/2006, the second respondent stated that the two items, which were charged at 12% and 4% respectively are taxable at 16% under Entry No.5(i) of Part E of the First Schedule to the TNGST Act, 1959.

4. This notice is questioned by the petitioner, primarily on two grounds. Firstly, the clarification dated 13.01.2006 issued by the Commissioner was not at the instance of the petitioner, and therefore, that cannot be a cause of action for re-opening the concluded assessment for the assessment year 2005-2006. The second ground is that, UPS has been always shown as a separate category of goods right from the year 1993, i.e., when the TNGST Act underwent a major change with effect from 12.03.2003, and the clarification given by the Commissioner is wholly not tenable.

5. The second respondent, in their counter affidavit, has merely reiterated, what has been stated by the Commissioner, in his clarification dated 13.01.2006.

6. Thus, it has to be seen, as to whether the said clarification can give a cause of action to the second respondent, to re-open the concluded assessment for the assessment year 2005-2006. Before I answer this question, it is pertinent to point out that, for the subsequent assessment year 2006-2007, the second respondent has completed the assessment and passed an order, dated 30.11.2009, wherein, the petitioner

has been taxed at the rate of 4% for UPS and 12% for other goods, viz., Voltage Stabilizers, Inverters, etc. Therefore, this is sufficient to hold the second respondent/Assessing Officer has realized the mistake, and rectified the same, and correctly levied the rate of tax for the next assessment year 2006-2007.

7. On a perusal of the relevant extracts of the schedule to the TNGST Act, it is seen that from the year 1993 onwards, UPS has been treated as separate category of goods. When there was a revision in the rate of tax with effect from 17.07.1996 to 22.01.2000, the same distinct goods, viz., UPS was maintained. Subsequently, when the tax was reduced to 4% with effect from 23.01.2000 till 26.03.2002, same classification, viz., UPS was maintained. Subsequently, when there was an amendment, which came into effect on 27.03.2002, wherein, in Serial No.18, Part-B of First Schedule to the TNGST Act, the classification was Electronic Items, as notified by the Government, and the Notification of the Government, dated 27.03.2002 mentioned a separate category as UPS. In the year 2002, a clarification was issued by the Commissioner of Commercial Taxes, dated 13.08.2002, in which, the Commissioner clarified that the UPS is taxable at 4%, Spike Buster at 10%, Inverter at 12%, and Voltage Stabilizers at 12%. In such circumstances, the Commissioner could not have made a omnibus classification of goods, which is not specifically described so in the Entry of the first schedule to the TNGST Act. In fact, in the Clarification, dated 13.01.2006, the Commissioner had stated that the UPS with built in battery or attached to batteries is also known as 'Inverter', and is taxable at 16% under Entry No.5(i) of Part-E of the First Schedule to the TNGST Act, 1959. He further stated that, if those UPSs are imported, they are taxable at 20% under Entry No.9 of the Eleventh Schedule.

8. Firstly, it is not clear as to what would be meaning of the expressions "Also Known". The Commissioner should have taken a definite stand that the UPS is akin to a Inverter, and both are similar products, and taxable at the same rates. This could not have been done by the Commissioner, because, UPS was a separate category of goods from the year 1993 onwards. Therefore, the Clarification dated 13.01.2006 is devoid of reasons as to how the Commissioner came to the conclusion that UPS is also known as 'Inverter'. This is sufficient to hold that the clarification is not tenable. In any event, such clarification could not have been a basis for re-opening the assessment of the petitioner, especially, when the petitioner did not seek for such Clarification. Furthermore, I find that Entry No.5(i) of Part-E was of the First Schedule to the TNGST Act deals with Generators, Generating Sets, Transformers, and Non-Electronic Voltage Stabilizers. Obviously, the UPS cannot be brought under the said entry.

9. For all the above reasons, there is absolutely no justification on the part of the second respondent to issue the impugned revision notice. Accordingly, this Writ Petition is allowed and the impugned revision notice is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1. The Commissioner of Commercial Taxes
Ezhilagam, Chepauk,
Chennai - 600 005.
2. The Commercial Tax Officer,
Mylapore Assessment Circle,
II Floor, 46, Greenways Road,
Chennai - 600 028.

+1cc to Mr.T.Pramod kumar Chopra, Advocate sr.69368

W.P.No. 20778 of 2007

sk(co)
ss(25/10/2017)

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