IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.09.2017

Coram:

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

W.P.No. 20779 of 2007
and
W.P.M.P.No.1 of 2007

M/s. Techser Power Solution Pvt. Ltd.,
rep. by its Sales Executive K. Jayakumar,
No.5, First Floor, 3rd Avenue,
Ashok Nagar, Chennai - 600 083.

...Petitioner

Versus

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

2. The Commercial Tax Officer,
Saligramam Assessment Circle,
Chennai - 600 083.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Certiorari calling for the records on the file of the first respondent in D.Dis.Acts Cell-II/66319/2004, dated 13.01.2006 Clarification No.11/06 and reconfirmed in letter No.L.Dis/Acts Cell-II 6331/2006 dated 26.03.2007, Clarification No.32/2007 and quash the same as illegal and contrary to specific entry under the Act.

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. The petitioner, who was a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu

General Sales Tax Act, 1959 (hereinafter referred as "TNGST Act") has filed this Writ Petition, praying for issuance of a Writ of certiorari to quash the clarification issued by the first respondent, dated 13.01.2006, in Clarification No.11/2006, and reiterated in Letter, dated 26.03.2007.

3. The petitioner is a manufacturer of Un-interrupted Power Supply Systems (hereinafter referred as "UPS"). It appears that the petitioner submitted a letter to the first respondent on 07.10.2004, seeking for clarification with regard to the rate of tax fixed for UPS. The first respondent stated that the UPS with built in battery, or attached to batteries is also known as ''Inverter'' and taxable at 16% under Entry No.5(i) of Part-E of the First Schedule to the TNGST Act, and if imported, it is taxable at 20% under Entry No.9 of 11th Schedule. As of now, the challenge to the Clarification has become academic, for more than one reason.

4. Firstly, pursuant to the impugned clarification, no action was initiated by the second respondent/Assessing Officer, with regard to the relevant assessment years 2003-04 and 2004-05. In other words, no re-opening proceedings were initiated for all these years. At this juncture, there is a legal embargo for the officer to issue any notice to re-open the concluded assessment. That apart, the TNGST Act has been repealed and substituted by Tamil Nadu Goods and Service Tax Act, 2017. Thus, the impugned clarification has worked itself out, and has to be rendered infructuous.

5. Be that as it may, since the petitioner apprehends that the Assessing Officer may initiate the proceedings pursuant to the impugned clarification, this Court considered the submissions made on either side as regards the validity of the clarification. The impugned clarifications runs contrary to the notification issued by the Government, in G.O.Ms.No.30, Commercial Taxes (B1) Department, dated 27.03.2002. In this notification, the government notified the electronic items, which would be taxable at 4% under the Entry No.18 (iii) of the First Schedule of Part-B of the Act, and Serial No.9 of the notification, UPS has been shown as a separate product. The position is no different earlier. From the year 1993, when the TNGST Act went through substantial amendment, with effect from 12.03.1993, UPS has been shown as a separate and distant product. Therefore, the first respondent,while issuing the impugned clarification, could not have made an observation that, UPS is also known as ''Inverter''. That apart, the impugned clarification is contrary to the Clarification issued earlier, dated 13.08.2002 in Clarification No.229 of 2002, which classifies UPS as a separate product, taxable at 4%. Inverter is a separate product taxable at 4%, under Entry No.14 (iii) in Part D of the First Schedule to the TNGST Act. That apart,

voltage stabilizer has been treated as separate product, taxable at 12%, and spike buster as separate product, taxable at 10%. Therefore, the observation made in the impugned clarification that UPS is also known as ''Inverter'' is not substantiated by any material, and appears to be a personal opinion of the Authority. That apart, the clarification states that the UPS should be treated as Inverter, and taxable at 16% under Entry No.5(i) of Part - E of the First Schedule. This entry, in my opinion cannot made applicable, since it deals with Generators, Generating Sets, Transformers and Non-Electronic Voltage Stabilizers. Therefore, the impugned clarification is wholly flawed.

6. The learned counsel appearing for the petitioner produced some material, which he has obtained through some data from the various websites. Though the articles are not authenticated, it gives a broad distinction between a UPS and Inverter. The subtle but relevant distinction, which has been shown is that UPS is used in the Desktop Computers, and provides power in the case of power-cut, and the Computer does not shut down, whereas, the Inverter is only a power back up solution, it converts Direct Current into battery current electricity, and mainly used to supply back up power for homes and offices, and cannot be used for a Computer system. That apart, there is a gross difference in back up time for both UPS and Inverter, apart from the circuitry difference. Thus, for the above reasons, it is confirmed that the impugned clarification is incorrect and cannot be made applicable to the petitioner.

7. In the result, this Writ Petition is allowed, the impugned order is set aside. 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,
Saligramam Assessment Circle,
Chennai - 600 083.

+1cc to Mr.T.Pramodkumar Chopra, Advocate sr.70450

W.P.No. 20779 of 2007

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