IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6777 of 2011

M/s.Machine Tools Traders (Madras),
rep. by its Partner,
218, Lingi Chetty Street. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Harbour II Assessment Circle,
Chennai-1. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the respondent in CST.1239/2004-05 dated 12.01.2011 quash the same.

For Petitioner :Mr.S.Raveekumar

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader

O R D E R

Heard Mr.S.Raveekumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.

2.The petitioner has filed this writ petition, challenging the assessment order dated 12.01.2011, under the provisions of the Central Sales Tax Act, 1956 for the assessment year 2004-05.

3.The issue involved is as to what is the rate of tax payable for sale of scientific equipments to educational institutions. This very issue was considered by this Court in the case of Tvl. Consolidated Engineering Services v. The Commercial Tax Officer in W.P.No.35133 of 2013 dated 30.06.2016 and the Court after taking into consideration the earlier decision, has allowed the writ petition and remitted the matter back to the authority for re-doing the assessment. The operative portion of the order reads as follows:

"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.

> 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.
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> 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.
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> 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."

4.Following the above referred decision, this writ petition is allowed, the impugned order is set aside and the matter is remanded back to the respondent to take note of the decision in the above referred case and extend the concessional rate of tax to the petitioner, by re-doing the assessment for the relevant year. No costs.

abr

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Harbour II Assessment Circle,
Chennai-1.

+1cc to Mr.Prabhakaran, Advocate SR.No.90051
+1cc to Special Government Pleader SR.No.90211

sm:8.1.2018

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