IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.3660 & 3661 of 2008

Tvl.Esces Marketing, rep. by its
Partner, Mr.M.Chandrasekar,
No.1, A Block, M.M.D.A.Colony,
Arumbakkam, Chennai-600 106. .. Petitioner in both W.Ps.

Vs.

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

2.The Commercial Tax Officer,
Vadapalani I Assessment Circle,
10-C, R.razaack Main Road,
Chennai-600 106. ... Respondents in both W.Ps.

Prayer in W.P.No.3660 of 2008 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records on the files of the second respondent in TNGST No.1461500/2005-06 dated 31.12.2007 and quash the same as being contrary to the principles of natural justice, without jurisdiction and authority of law.

Prayer in W.P.No.3661 of 2008 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records on the files of the first respondent in "Clarification No.100/2004 L.Dis.Acts.Cell.II/31478/2003 dated 05.04.2004".

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.K.Venkatesh,
Government Advocate

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C O M M O N O R D E R

Heard Mr.R.Senniappan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

2.The petitioner has filed two writ petitions viz., W.P.No.3660 & 3661 of 2008. In W.P.No.3660 of 2008, the petitioner has challenged the revised assessment order under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short "TNGST Act") for the assessment year 2005-06. In W.P.No.3661 of 2008, the petitioner has challenged the clarification issued by the Commissioner in Clarification No.100/2004 L.Dis.Acts.Cell.II/31478/2003 dated 05.04.2004, clarifying the rate of duty in respect of the product sold with the brand name 'celogrid'. The assessment for the relevant assessment year was completed by the assessing officer and an order was passed on 15.03.2007, by levying tax at the rate of 4% on the first sales turnover of G.I.Channels. After about six months, the second respondent issued revision notice dated 03.09.2007, proposing to tax the commodity of G.I.Channels at 12%. In the notice dated 03.09.2007, the second respondent did not disclose as to what is the basis on which he proposed to levy higher rate of tax. The petitioner submitted their objections on 01.11.2007, stating that the correct rate of tax is 4% as per Part-4(V) of the Second Schedule to the TNGST Act. The second respondent has rejected the objections and treated the petitioner's product as "unclassified products" exigible to tax at 12% under entry No.40 in Part D of the First Schedule to the TNGST Act. The second respondent has referred to the clarification issued by the Commissioner/first respondent dated 05.04.2004, as noticed above. This has necessitated the petitioner to file these writ petitions, challenging the assessment order as well as the clarification. Admittedly, the clarification has been issued at the instance of the third party and not at the instance of the petitioner. Furthermore, on a reading of the clarification, it is seen that the Commissioner has clarified the product, which is sold with the brand name 'celogrid' said to be consisting of G.I.Channels, Beedings and Tees, which are parts of ceiling suspension systems and therefore, taxable at 12% under residuary entry No.40 in Part-D of the First Schedule to the TNGST Act. So far as the petitioner is concerned, there is no such allegation that the petitioner's product is also identical to that of the product, which was subject matter of the clarification dated 05.04.2004. Therefore, the petitioner need not be aggrieved by the said clarification. This being the factual position, it has to be seen as to whether there could have been revision of assessment as has been done by the second respondent. Admittedly, there was no tangible material available in the hands of the assessing officer to show that the product dealt by the petitioner was different or similar to the product, which was dealt by the Commissioner while issuing clarification dated 05.04.2004. Therefore, absolutely there is no cause of action for revising the assessment, especially when there was no new facts before the officer, who passed the assessment order. Thus, the revision of assessment made pursuant to the impugned order is not sustainable in law.

For the above reasons, W.P.No.3660 of 2008 is allowed, the impugned revised assessment order is quashed and W.P.No.3661 of 2003 is closed as unnecessary. No costs.

sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

abr

To

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

2.The Commercial Tax Officer,
Vadapalani I Assessment Circle,
10-C, R.razaack Main Road,
Chennai-600 106.

+ 1 cc to Spl. Government Pleader [Taxes] sr.no.75211

W.P.Nos.3660 & 3661 of 2008

RR 17/11/2017