IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.12.2017

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.19671 and 19672 of 2017
and W.M.P.Nos.21227 and 21228 of 2017

M/s.Biojenik Engineering (P) Ltd.,
Represented by its Proprietor
Mr.R.Shankar
Plot No.77, G3, Vigneshwaras Lakshmi Flats
Indira Gandhi Street, Anna Nagar,
Pammal, Chennai 600 075. .. Petitioner in both W.Ps.

..Vs..

The Commercial Tax Officer
Chrompet Assessment Circle
No.117, Station Road, Radha Nagar,
Chrompet, Chennai 600 044. .. Respondent in both W.Ps.

Prayer in W.P.No.19671 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent in CST/1011461/2013-2014 dated 30.03.2017 and the consequential notice in CST/1011461/2013-2014 dated 22.06.2017 and quash the same as illegal, arbitrary and against the law laid down in the judgement in the case of M/s.Technomed Electronics and another Vs Commercial Tax Officer, Thiruvanmiyur Circle Assessment Circle, Chennai reported in 28 VST 306 followed in the case of M/s. Consolidated Engineering Services in W.P.No.35133 of 2013 and direct the respondent to grant the concessional rate of tax at 5% on the sales made to educational institutions and research institutions.

Prayer in W.P.No.19672 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent in CST/1011461/2014-2015 dated 30.03.2017 and the consequential notice in CST/1011461/2014-2015 dated 22.06.2017 and quash the same as illegal, arbitrary and against the law laid down in the judgement in the case of M/s.Technomed Electronics and another Vs Commercial Tax Officer, Thiruvanmiyur Circle Assessment Circle, Chennai reported in 28 VST 306 followed in the case of M/s. Consolidated Engineering Services in W.P.No.35133 of 2013 and direct the respondent to grant the concessional rate of tax at 5% on the sales made to educational institutions and research institutions.

For Petitioner in both W.Ps. : Mr.P.Rajkumar

For Respondent in both W.Ps. : Mr.K.Venkatesh
Government Advocate

COMMON ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent and perused the materials placed on record including the written instructions given by the Assessing Officer to the learned Special Government Pleader.

2.The petitioner had effected sales of scientific equipments to various educational institutions such as Indian Institute of Technology, etc., The petitioner's contention is that the supplies being effected to the educational institutions are capital goods and taxable under Schedule II Part B at the rate of 5% as per the amended Commodities list under CTD portal. The respondent rejected the petitioner's objection as not acceptable since the sales were made to Government will be treated as sales to unregistered dealer and the same is liable for tax at the rate of 14.5%. The stand taken in the impugned order has been reiterated by the Assessing Officer in the written instructions given to the learned Special Government Pleader.

3.The issue involved in these writ petitions were considered by this Court in the case of ***Tvl.Consolidated Engineering Services Vs. Commercial Tax Officer, Saidapet Assessment Circle, in W.P.No.35133 of 2013 dated 30.06.2016***. In the said case also, supplies were effected to educational institutions established by the Government. The Court took into consideration the earlier decision in the case of Technomed Electronics and another Vs. ***CTO, Thiruvanmiyur Assessment Circle, and another*** reported in ***(2010) 28 VST 306 (Mad)*** and allowed the writ petition.

4.The learned Government Advocate appearing for the respondent does not disputed the above legal position. For better appreciation, the operative portion in the case of ***Tvl.Consolidated Engineering Services*** is quoted herein below:

> *"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:-*
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> > *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.

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.*

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.

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."*

5.Thus, in the light of above, the impugned orders call for interference as the reasons assigned by the respondent is incorrect. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matter is remanded back to the respondent to take note of the decision rendered in the above referred cases and extend the concessional rate of tax to the petitioner by redoing the assessment for both the assessment years. No costs. Consequently, connected Miscellaneous Petitions are closed.

20.12.2017

Index : Yes/No
Internet : Yes/No
dna/cse

To

The Commercial Tax Officer
Chrompet Assessment Circle
No.117, Station Road, Radha Nagar,
Chrompet, Chennai 600 044.

T.S.SIVAGNANAM, J.

dna/cse

W.P.Nos.19671 and 19672 of 2017

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