IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.12.2018
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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.30391 and 30392 of 2008
and
MP Nos.2 and 2 of 2008

M/s.Macons Industries
rep.by its Partner D.Kasi Thangam ... Petitioner in both the WPs

Vs

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

2.The Commercial Tax Officer,
Manali Assessment Circle,
First Floor, Kuralagam,
Annexe Building,
Chennai -600 108. ... Respondents in both the WPs

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents particularly that of the first respondent contained in Letter Nos.VAT Cell/42192/2007 (VCC No.1168) dated 31.08.2007 relating to Servall Engineering Works Private Limited, quash the same as illegal, ultra vires and without jurisdiction and consequently forbear the 2nd respondent from in any manner proceeding further with the revised demand made in his file Nos.VAT/33861084515/2007-2008 dated 26.11.2008 and VAT/33861084515/2008-2009 (April) dated 25.11.2008.

For Petitioner : Mr.T.S.Rajamohan
For Respondents : Mr.M.Hariharan, AGP (Taxes)

COMMON ORDER

These writ petitions have been filed challenging the impugned orders / clarifications issued by the first respondent, which led to issuing final orders by the second respondent holding that the cranes dealt by the dealer, do not fit under the category 'capital goods' and hence, they are taxable at 12.5% under Part C of the First Schedule under the entry goods not specified in any of the schedule, on the ground that there is no provision in the TNVAT Act enabling the first respondent to issue one such circular or clarification.

2.Today, when these writ petitions were taken up for consideration, the learned counsel appearing for the petitioner has submitted that the issue involved in these writ petitions is squarely covered by the order passed by this Court in W.P.(MD) No.5866 of 2010 dated 27.03.2014, [M/s.Veesons Energy Systems (P) Limited v. the Commissioner of Commercial Taxes, Chepauk, Chennai and another], wherein this Court held that the Commissioner of Commercial Taxes has no powers to issue any circular or clarification in this connection; Section 48A was introduced with effect from 27.09.2011; and any order by the State Level Authority for Clarification and Advance Ruling under Section 48A can only be made regarding any clarification on rate of tax on an application by a dealer.

3.This Court has also heard the learned Additional Government Pleader appearing for the respondents, who has no objection in granting similar relief to the petitioner herein.

4.This Court has perused the order passed in W.P.(MD)No.5866 of 2010 dated 27.03.2014. No doubt, the case in hand is squarely covered by the said decision, wherein, at paragraphs 6 and 16, it is held as under:

> "6. The petitioner herein is involved in the manufacturing of industrial boilers. Huge metals can only be carried by crane for manufacturing boilers. When the cranes are exclusively purchased by a dealer to be used for manufacturing activity, the same would definitely fall under the definition of capital goods. However, when the cranes purchased as rented out to others or used for any other purpose other than for manufacturing activity, the same cannot be treated as capital goods. Therefore, the classification of cranes would have to be dealt with on the facts of each case."
>
> "16. Therefore, from a conjoint reading of the above judgments and the provisions, it is clear that the first respondent had no powers to issue any circular or clarification. Further section 48 A was introduced with effect from 27.09.2011. Any order by the State Level Authority for Clarification and Advance Ruling under Section 48 A can only be made regarding any clarification on rate of tax on an application by a dealer. Even there, the first respondent has no powers to individually or independently issue any clarification on rate of tax. It is also clear that the first respondent does not have any authority to issue circulars or clarifications on any other matters other than rate

of tax. The first respondent cannot use the circulars or clarifications to overcome the provisions of the statute. Any interpretation which was not intended by the legislature also cannot be introduced by way of circulars or clarifications. Any change in the statute can be brought in only by way of amendment. The levy of tax must be within the four corners of law and must not be based on surmises and conjunctures. Any act contrary to the provisions of the taxing statute would be hit by Article 265 of the Constitution of India. Therefore, the impugned circular issued without authority is set aside. The petitioner is directed to submit their objections within four weeks from the date of receipt of a copy of this order and the second respondent shall consider the objections and pass orders independently sticking on to the provisions of the Act. In the result, the Writ Petition is allowed. No costs."

5.Applying the aforesaid order to the facts of the present case, the impugned orders are set aside and the writ petitions are allowed. The petitioner is directed to submit their objections within a period of four weeks from the date of receipt of a copy of this order to the second respondent. On such submission, the second respondent shall consider the same and pass appropriate orders independently sticking on to the provisions of the Act. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.The Principal Commissioner and
Commissioner of Commercial Taxes, Chepauk, Chennai - 600 005.

2.The Commercial Tax Officer,
Manali Assessment Circle,
First Floor, Kuralagam,Annexe Building, Chennai -600 108.
+1 cc to The Government Pleader, Sr.No.87998
+1 cc to Mr.T.S.Rajamohan, Advocate, Sr.No. 87731

W.P.Nos.30391 and 30392 of 2008

NA(CO)
CSL/10.05.2019