BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.02.2018
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.446 of 2018
and
W.M.P.(MD).No.439 of 2018

Derik Auto Agency
Represented by its Proprietor,
F.Stalin, 181-A, K.P.Road,
Nagercoil, Kanyakumari District. ...Petitioner

Vs.

The Commercial Tax Officer,
Nagercoil (Tower Junction),
Mead Street, Nagercoil,
Kanyakumari District. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the respondent herein in TIN:33036140466/2011-12, dated 20.10.2017 and quash the same as unconstitutional, wholly without jurisdiction and void abinitio.

For Petitioner : Mr.M.Azeem
For Respondent : Mrs.S.Srimathy
Special Government Pleader

ORDER

Mrs.S.Srimathy, learned Special Government Pleader, takes notice on behalf of the respondent.

By consent of both the parties, the main Writ Petition itself is taken up for final disposal.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

3.The petitioner is an assessee registered with the respondent. The petitioner is dealing in purchase and sale of portable generator sets. They are run by petrol and used for producing electricity. They are normally called as gensets. It falls within serial No.39 of of Part C Schedule of Tamil Nadu Value Added Tax Act, 2006. Originally, the rate of tax leviable was at 12.5% up to 11.07.2011. It was enhanced to 14.5% with effect from 12.07.2011. Subsequently, the Government issued G.O.

(Ms).No.156, Commercial Taxes and Registration (B2) Department, dated 09.12.2013, reducing the rate of tax from 12.5% to 4% and from 14.5% to 5% respectively with effect from 01.04.2008 to 11.07.2008 and with effect from 12.07.2011 to 06.12.2012. The Government Order itself states that it shall be deemed to have come into force on 01.04.2008.

4.The learned counsel appearing for the petitioner drew the attention of this Court to the earlier Government Order issued in this regard. G.O.(Ms).No.36, Commercial Taxes and Registration (B2) Department, dated 01.04.2008, states that any dealer on the sale of generators used for producing electricity have to pay at the rate of 4%. Yet another Government Order namely, G.O.(Ms). No.78, Commercial Taxes and Registration (B2), dated 11.07.2011, also states that this will be at 5% with effect from 12.07.2011. Another G.O.(Ms).No.154, Commercial Taxes and Registration (B2) Department, dated 08.12.2012, also makes a reduction in rate from 14.5% to 5% with effect from 07.12.2012. The transaction in question took place during the assessment year 2011-2012. Therefore, the petitioner herein would certainly be entitled to the benefits of the aforesaid Government orders.

5.As already pointed out by the learned counsel for the petitioner, there was some concession in the said Government Order dated 09.12.2013. It is seen that the impugned order dated 20.10.2017, passed by the respondent does not take note of this G.O.(Ms).No.156, Commercial Taxes and Registration (B2) Department, dated 09.12.2013. Since a relevant material has not been taken note of while passing the order of assessment, this Court will have to necessarily quash the same. The order impugned in the Writ Petition is therefore quashed.

6.The matter is remitted to the file of the respondent to pass orders afresh in accordance with law.

7.This Writ Petition is allowed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To
The Commercial Tax Officer,
Nagercoil (Tower Junction),
Mead Street, Nagercoil,
Kanyakumari District.
+1CC TO Mr.M.Azeem, Advocate, Sr No.51931

+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.52506

W.P.(MD).No.446 of 2018
28.02.2018

tsg

MS/KK/SAR-4/23.04.2018/2P.4C