BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.7295 & 7296 of 2015
and
M.P.(MD)Nos.1 & 1 of 2015

M/s.Pearl Generators,
Rep. by its Proprietor
R.Nagarajan ... Petitioner in both WPs

Vs.

The Commercial Tax Officer (FAC),
Nagercoil (Town),
Nagercoil. ... Respondent in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in TIN Nos.33456101726/2008-09/A1/620/2013 (Para I) and 33456101726/2009-10/A1/620/2013 (Para I), respectively, and quash the proceedings dated 03.03.2015 as unlawful and in violation of the principles of natural justice and further direct the respondent to consider the claim of rate of tax at 4% on the sales of generators used for producing electricity as per G.O.Ms.No.36, dated 01.04.2008.

For Petitioner : Mr.R.D.Ganesan
For Respondent : Mr.Aayiram K.Selvakumar,
Additional Government Pleader
(In both WPs)

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COMMON ORDER

These writ petitions were filed way back in April, 2015. It was listed for admission on as many as five occasions. Till date, no counter affidavit has been filed. Therefore, this Court is left with no other option, but to dispose of the matter on merits, based on the materials available on record.

2. Heard the learned Counsel on either side.

3. The petitioner in these two writ petitions is one and the same. The Assessment Years are 2008-09 and 2009-10. The petitioner is dealing in Gen sets. During the relevant time, the rate of tax leviable on generators used for producing electricity was 4%. This

was by virtue of G.O.Ms.No.36, Commercial Taxes and Registration Department, dated 01.04.2008. But then, the petitioner received notice proposing to levy 12.5% tax. The petitioner offered his reply dated 15.10.2013, pointing out that gen sets are nothing but generators used for producing electricity and therefore, only 4% concessional rate should be levied and not 12.5%. Even though the Government Order was specifically cited, the impugned orders were passed without a proper consideration of the same. In the impugned orders, it has also been observed that the petitioner has sold the goods in question within the State. In fact, the case of the petitioner is that he has engaged only in intra state sale. Since the objections quoting G.O.Ms.No.36 of 2008 have not been considered by the respondent, the orders impugned in these two writ petitions are set aside and the matter is remitted to the file of the respondent to pass orders afresh, in accordance with law, after hearing the petitioner.

4. With the above observations and directions, both the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Commercial Tax Officer (FAC),
Nagercoil (Town),
Nagercoil.

+ 2 CC TO Mr.R.D.GANESAN, ADVOCATE IN SR No. 95334 & 95335
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 95763

GK
TE/SV/SAR-1 : 11/12/2018 : 2P/5C

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