BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 10.11.2017

CORAM :
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P(MD)Nos.2137 to 2140 of 2011
and M.P.(MD) Nos.1, 1, 1 and 1 of 2011

M/s.Jayaram Enterprises,
Rep. by its Partner : S. Anbunathan,
No.14-A, Silampanni Sannathi Street,
Devakottai. ... Petitioners in W.P.(MD) Nos.2137 & 2138 of 2011

Tvl.Chena Enterprises,
Rep. by its Partner : S. Anbunathan,
No.14-A, Silampanni Sannathi Street,
Devakottai. ... Petitioners in W.P.(MD) Nos.2139 & 2140 of 2011

vs.

The Commercial Tax Officer,
Devakottai. ... Respondent in all the petitions

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records on the file of the respondent herein in TNGST:Nos.5461155/2004-05, 5461155/2005-06, 5460705/2005-06 and 5460705/2006-07 respectively dated 30.12.2010 and quash the same as illegal, invalid and unsustainable in view of the Judgment of the Hon'ble Supreme Court of India reported in 145 STC Page 91 in so far as the levy of re-sale tax and consequent penalty on the petitioner's distribution of Re-charge Coupons of M/s.Reliance Info Com Ltd., is concerned.

For Petitioner in all the petitions : Mr.A.Chandrasekaran

For Respondents in all the petitions : Mr.R.Karthikeyan Additional Government Pleader

COMMON ORDER

These writ petitions have been filed challenging the orders dated 30.12.2010 in TNGST:Nos.5461155/2004-05, 5461155/2005-06, 5460705/ 2005-06 and 5460705/2006-07 respectively.

2.Heard Mr.A.Chandrasekaran, learned counsel appearing for the petitioners and Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondents.

3.This Court by order *dated 25.07.2017 in W.P.No.19831 of 2004* in the matter of *M/s.Dhanalakshmi Oil Traders v. The State of Tamilnadu rep. by Secretary to Government, Commercial Taxes Department and another* held as follows:-

> "3.It is submitted by the learned counsels on either side that the legal issue, which is involved in this Writ Petition, has been settled by various decisions and has also taken clarified by the Authority for Clarification and Advance Ruling, dated 29.10.2014, to the following effect:-
>
> 12.The re-clarification in respect of the Recharge Coupons, based on the above is as follows:-
>
> (i) The Recharge Coupons or vouchers for mobile phone connections are not "goods" falling within the scope of the definition of "Goods", under Section 2(21) of the TNVAT Act, 2006 and therefore attracts no tax liability under Section 3(2) of the TNVAT Act, 2006.
>
> (ii) Consequently the clarification advanced earlier in this regard in ACAAR No.86/2012-13 (Acts Cell-II/38112/2012, dated 14.02.2013, is rescinded.
>
> In the light of the above clarification, the Writ Petition is allowed. No costs."

4.In the counter affidavits filed by the respondent dated 22.03.2011, it has been stated as follows: -

> "8.It is submitted that the respondent had passed final order levying resale on the sale of pre paid coupon only on the ground that the petitioner had not produced any relevant documents to prove that what was purchased and what was sold was pre paid coupon without profit motive for both the assessment years 2004-05 and 2005-06. However, if the petitioner is ready to produce relevant documents to prove that what was purchased and sold by him was pre paid coupons, the respondent is ready to recheck the account and pass final order as per the guidelines given by the Honourable Madurai Bench of Madras High Court in it's common order dated 05.03.2008."

5.Learned counsel for the petitioners submits that the petitioners are ready to produce the relevant documents to prove that what had been purchased and sold by them was pre-paid coupons or starter packs of SIM cards.

6.In view above decision of this Court in W.P.No.19831 of 2004 dated 25.07.2017, the averments made in the counter affidavit filed by the respondent and the submission made by learned counsel appearing for the petitioners, these Writ Petitions are disposed of with the following directions:

(i) As undertaken by learned counsel for the petitioners, the petitioners shall produce the said documents before the respondent for verification on or before 30.11.2017.

(ii) The respondent shall consider the same and file a report regarding the same before this Court.

No costs. Consequently, connected Miscellaneous Petitions are closed.

For Reporting compliance call on 08.12.2017.

Sd/-
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To
The Commercial Tax Officer,
Devakottai.

+1cc to Mr.A.CHANDRASEKARAN,Advocate,SR.86459
+1cc to M/S.Special Government Pleader,SR. 86895

W.P(MD)Nos.2137 to 2140 of 2011
and M.P.(MD) Nos.1, 1, 1 and 1 of 2011
10.11.2017

SJ
KK/SKN RSK/SAR 4/27.11.2017/ 3P- 4C