IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 09.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.18376 to 18378 of 2009
& MP.Nos.1 to 1 of 2009

Sakthi Ganesh Infrastructure Pvt Ltd,
Rep. by its Managing Director,
4/109, Indira Nagar, Veerapandi Post,
Tiruppur. ...Petitioner

(in all WPs)

Vs

1. Assistant Commissioner (CT),
   Tiruppur Rural Circle, Tiruppur.

2. Joint Commissioner (CT), Coimbatore.

3. The Union of India,
   Rep. by the Secretary to the Government of India,
   Department of Revenue, New Delhi.

...Respondents
(in all WPs)

Prayer in WP.No.18376 of 2009: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the first respondent in TNGST 2387607/06-07 dated 29.07.2009, quash the same.

Prayer in WP.Nos.18377 & 18378 of 2009: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent in TNVAT 33432387607/07-08 dated 29.07.2009 and TNVAT 33432387607/08-09 dated 29.07.2009, quash the same and consequently direct the first respondent to refund the sum collected towards labour and transport charges against the provision of the Act.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.A.Zakkir Hussain,
Govt. Advocate for R1 to R2
Mr.A.P.Srinivas, SSC for R3

COMMON ORDER

Though the authorities herein have proposed levy of tax and penalty on various grounds by placing reliance on Rule 8 (2) of TNVAT Rules 2006, which specifically excludes the freight charges as post-sale charges which are separately charged in the invoices, the only ground on which the present writ petitioner seems to be aggrieved is that the freight charges and pumping charges have been separately shown in the invoices without including the sale and sale price.

2. On this aspect, the Division Bench of this Court, in a recent decision reported in 2019 (1) TMI 711 in the case of M/s.Larsen & Toubro Limited Vs. State of Tamil Nadu rep. by the Joint Commissioner (CT), had held that the cost of freight and delivery or cost of transportation cannot be included in the sale price, where they are separately charged and when the freight charges and pumping charges have been separately shown in the invoices without including the same in the cost of the goods, the tax cannot be levied on the same. This clarification of the Division Bench was made pursuant to the impugned orders passed in the present writ petitions, which has not been brought to the notice of the authorities. As such, it would be appropriate to grant liberty to the petitioner to place the present decision of the Division Bench before the authorities for the purpose of reconsidering the same.

3. In the light of the decision rendered by the Division Bench of this Court and in view of the observations made above, the impugned orders dated 29.07.2009, on the file of the 1 st respondent, are set aside and the matter is remanded back to the 1 st respondent for re-consideration. During the course of such re-consideration, the petitioner herein is granted liberty to file his objections along with the necessary copies of the decisions relied upon by him and on receipt of such objections, the 1 st respondent herein shall consider the same in accordance with law and pass appropriate orders, as expeditiously as possible, in any event, within a period of 3 months from the date of receipt of copy of this order.

4. Accordingly, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Pkn.
To

1. Assistant Commissioner (CT),
   Tiruppur Rural Circle, Tiruppur.

2. Joint Commissioner (CT), Coimbatore.

3. The Union of India,
   Rep. by the Secretary to the Government of India,
   Department of Revenue, New Delhi.

+1cc to Mr.S.Raveekumar , Advocate SR.No. 57796
+1 cc to Spl Government Pleader Sr.No. 58222

+2ccs to Mr.S.Raveekumar , Advocate SR.No. 57796
(27/09/2019)

W.P.Nos.18376 to 18378 of 2009

A.SK(22/08/2019)