IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2019

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 28878 & 28879 of 2011
and
M.P. Nos. 1, 1, 2 of 2011 & 1, 1 of 2014

M/s. Electronics Corporation of India Limited,
A Government of India
(Department of Atomic Energy Enterprise),
Represented by Y.Visweswara Rao,
Additional General Manager (Taxation),
ECIL P.O.,
Hyderabad - 500 062. ... Petitioner in both W.Ps

Vs

1. The Principal Secretary/Commissioner
of Commercial Taxes, TN
Chepauk, Chennai - 5.

2. The Joint Commissioner (CT),
Central Revenue Building,
Tirunelveli.

3. The Commercial Tax Officer,
Now designated as the Assistant
Commissioner (CT),
Saidapet Assessment Circle,
Chennai - 15.

4. The Nuclear Power Corporation of India Limited,
(A Government of India Enterprise),
Kudankulam P.O., Radhapuram Taluk,
Tirunelveli District.
... Respondents in both W.Ps

Prayer in W.P. No. 28878 of 2011: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the Third Respondent in TIN.33806221377/2008-2009 dated

28.07.2008 and quash the same as being without jurisdiction, invalid and illegal, and further direct the Third Respondent to issue a Certificate in Form S to the Petitioner.
Prayer in W.P. No. 28879 of 2011: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the First Respondent in Lr.VAT Cell/A1/23322/2011 dated 12.07.2011 and quash the same as being without jurisdiction and contrary to Section 13 of the TNVAT Act and hence invalid and illegal.

For Petitioner : Mr. V.Srikanth
(in both W.Ps)

For R1-R3 : Mr. V. Haribabu
(in both W.Ps) Additional Government Pleader (Tax)
For R4 : Mr. Krishna Srinivisan
(in both W.Ps) for M/s. S. Ramasubramaniam & Associates

COMMON ORDER

By this common order, both the writ petitions are being disposed. I have heard the learned counsel for the Petitioner and the learned Additional Government Pleader for the Official Respondents and the Fourth Respondent.

2. In these writ petitions, the Petitioner has prayed for quashing of the impugned orders passed by the Third Respondent and the First Respondent for a consequential direction to the Third respondent to issue a certificate in Form S to the Petitioner.

3. The First Respondent has placed work order dated 02.03.2005 on the Petitioner which essentially involves “works contract”. Petitioner submits that the aforesaid work order was placed on the Petitioner’s head office at Hyderabad only the required labour for the aforesaid work was deployed under the control of the Petitioner’s Regional Office at Chennai.

4. As per the aforesaid work order, the Petitioner is required to obtain an Exemption Certificate from the sales tax authority as applicable in case works contract tax was not applicable to the Petitioner.

5. It is the case of the Petitioner that Third Respondent has issued such certificates on 26.09.2005 and 26.04.2006 under

the provisions of the Tamil Nadu General Sales Tax Act, 1959 and on 23.04.2007 under the provisions of the Tamil Nadu Value Added Tax Act, 2006. However, when the Petitioner approached for a similar certificate for the succeeding period, in view of the extension of the contract, the Third Respondent has refused to grant the same under the impugned order dated 28.07.2008. The operative portion of the impugned order dated 28.07.2008 of the Third Respondent reads as under:-

> "5. They also claim that their involvement in this contract is on labour portion and not on the supply part of the said contract. If the receipt pertains to labour portion alone the question of value added tax on their labour portion of the contract does not arise and it attracts a levy of service tax only."

6. Under these circumstances, the Petitioner sent representations to the First Respondent and by impugned order dated 12.07.2011 has rejected the request of the Petitioner with the following observation:-

> "With reference to letter cited, it is informed that you are a registered dealer within the State, the receipt of goods from Andhra Pradesh is nothing but an inter-state purchase and hence the transfer of property locally would amount to local sales only. Hence, tedious collection is an essential aspect to be performed under Section 13 of the T.N. VAT Act by every person responsible for paying any sum to any dealer for executive of works contract at the time of payment of such sum."

7. The learned counsel for the Petitioner submits that since the impugned orders have refused to give Exemption Certificates to the Petitioner, the Fourth Respondent has proceeded to deduct works contract tax from the amounts payable to the Petitioner and has remitted the same to the government treasury. This aspect is confirmed by the learned counsel for the Fourth Respondent.

8. The learned counsel for the Petitioner submits that since the Petitioner is exempted from payment of works contract tax under the provisions of the Tamil Nadu Value Added Tax Act 2006, the Third Respondent ought to have issued certificate of exemption in Form S as per Rule 9 (2) of the Tamil Nadu Value Added Tax Rules, 2007.

9. Per contra learned Additional Government Pleader (Tax) appearing for the Official Respondents submits that the impugned orders of the First Respondent and the Third Respondent are well reasoned and require no interference.

10. He submits that the application for exemption was earlier made by the Petitioner's local office and therefore exemption was granted. However, the contract in question has been awarded to the Head Office of the Petitioner at Hyderabad and therefore for such work orders, question of grant of Exemption Certificate under the provisions of the Tamil Nadu Value Added Tax Act, 2006 does not arise. He, therefore, submits that the writ petition is liable to be dismissed.

11. I have considered the arguments of the learned counsel for the Petitioner and the Respondents. The activity undertaken by the Petitioner attracts central sales tax under the provisions of the Central Sales Tax Act, 1956. The definition of the expression "sale" in 2 (g) includes "works contract". Such sale attract central sales tax under the provisions of the aforesaid Act alone.

12. There is no mechanism provided for any exemption or for payment of such tax liability on reverse charge basis by the recipient under the scheme of the aforesaid Act. Since the work order was placed on the Petitioner's Head Office by the Fourth Respondent, it attracts tax under the provisions of the said Act only. Therefore, tax if any is payable by the Petitioner's Head Office at Hyderabad alone. The work order is outside the purview of the Tamil Nadu VAT Act, 2006 unless supply of goods were made from Tamil Nadu. Therefore, the Third Respondent was justified in refusing to grant certificate to the Petitioner.

13. For the same reason, Fourth Respondent was also not obliged to deduct tax under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and remit the same. It is noticed that the Fourth Respondent has however already deducted amounts and deposited the same to the credit of the government treasury for the Assessment Years 2008-2009 to 2010-2011. Therefore, liberty is given to the Petitioner to approach the Commercial Tax Department to work out its remedy for refund of the amounts paid by the Fourth Respondent in absence of the certificates for the aforesaid period.

14. These writ petitions are therefore disposed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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of Commercial Taxes, TN
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(A Government of India Enterprise),
Kudankulam P.O., Radhapuram Taluk,
Tirunelveli District.

+1cc to M/s.V.Srikanth, Advocate sr.105936
+2cc to M/s. S.Ramasubramaniam & Associates,
Advocate sr.106660, 106661
+1cc to Special Government Pleader sr.106601

W.P. Nos. 28878 & 28879 of 2011
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bp(co)
nr 17/02/2020