IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.12.2019
CORAM
THE HON'BLE MR. JUSTICE C. SARAVANAN
W.P. Nos.23745 to 23748 of 2016
and WMP.Nos.20338 to 20341 of 2016

M/s.Super Recording Co. Ltd.,
Rep by its Managing Director,
No.244, Anna Salai,
Chennai - 600 006. ... Petitioner in all the cases

Vs.

1. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk
Chennai -5.

2.The Assistant Commissioner (CT)
Anna Salai Assessment Circle,
Greams Road, Chennai - 6 .. Respondents in all the cases

Petition filed under Article 226 of the Constitution of India, for issue of Writ of Certiorari Mandamus to call for the records of the second respondent in his proceedings in TIN.No.33720640332/2010-2011, 2011-2012, 2012-2013 and 2013-2014 respectively dated 28.10.2015 and quash the same and direct the second respondent to pass fresh assessment orders and to levy tax for the recorded and pre-recorded DVDs and CDs at 5% as per the statue in item No.5 of entry 68 of the Part B of the First Schedule of TNVAT Act and pass such further orders.

For Petitioner : Mr.C.Bakthi Siromoni, in all cases

For Respondents : Mr.M.Hariharan AGP (T)
in all cases.

COMMON ORDER

By this common order, all the four Writ Petitions are being disposed.

2.The petitioner is aggrieved by the impugned orders passed by the 2nd respondent for the four assessment years. By the impugned orders, the 2nd respondent has demanded tax on recorded music CD/DVD under Entry (13-A) (e) in Parts C to I Schedule to TNVAT Act, 2006 at 14.5%. The above Entry deals with DVDs and CDs.

3.It is the case of the petitioner that recorded music CD/DVD are liable to tax at 4% / 5% in terms of Entry No.68, Part B to the I Schedule as "Information Technology Products". According to the petitioner, music recorded CD/DVD are "Information Technology Products" notified by the Government for the purpose of aforesaid Entry.

4.Learned counsel for the petitioner submits that the Government of Tamil Nadu has issued G.O.Ms.3 CT&R (B1) dated 01.01.2007 for the aforesaid purpose. He submits that serial No. 5 (d) to the aforesaid Notification deals with "recorded and pre-recorded DVDs and CDs" and therefore recorded music CDs/DVDs cannot be subjected duty at the rate specified in Entry (13-A) (e) in Parts C to I Schedule to TNVAT Act, 2006.

5.Learned counsel further submits that the impugned orders are based on a clarification issued under Section 48 A of the TNVAT Act, 2006 and therefore it is not binding on the petitioner. After arguments on behalf of the petitioner was heard for some time, the petitioner submits that the petitioner would like to withdraw the writ petitions and pursue an alternate remedy under Section 54 of the TNVAT Act, 2006.

6.Under the circumstances, the present Writ Petitions are disposed with liberty to pursue the aforesaid remedy by invoking the revisional powers under Section 54 of the TNVAT Act, 2006. The petitioner shall file such applications before the jurisdictional Joint Commissioner or such other Officer holding such powers within a period of 30 days from date of receipt of a copy of this order. If such applications are filed before such Revisional Authority, such Revisional Authority shall pass orders on merits in accordance with the law. While passing such orders, the Revisional Authority shall not reject the applications on the ground of limitation. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

tsh/jen

To

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk
Chennai -5.

2.The Assistant Commissioner (CT)
Anna Salai Assessment Circle,
Greams Road, Chennai - 6.

+1cc to Government Pleader, SR.No.106587.

W.P.Nos.23745 to 23748 of 2016

PA(CO)
CSR: 14.02.2020