



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.932 & 933 of 2013

and

M.P.No.1 of 2013 in W.P.No.932 of 2013

and

M.P.No.1 of 2013 in W.P.No.933 of 2013

M/s.Technomax Building Solutions
India (Pvt) Ltd.,
1/382, Mettupalayam Road,
Press Colony, Coimbatore - 641019.

...Petitioner in all Wps

Vs

1. Assistant Commissioner (CT),
Thudiyalur Assessment Circle,
Coimbatore - 641018.
2. Joint Commissioner (Enf) (CT),
Coimbatore - 641018.
3. Joint Commissioner (CT),
Coimbatore - 641018.
4. The Union of India,
Rep. by the Secretary to Govt. of India,
Department of Revenue,
New Delhi.

...Respondents in all Wps

COMMON PRAYER: Writ Petitions 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 1st respondent in TIN 33522026960/2009-10 (W.P.No.932 of 2013) and TIN 33522026960/2008-09 (W.P.No.933 of 2013), dated 28.11.2012 respectively and quash the same.



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For Petitioner : Mr.S.Ravee Kumar
(in all WPs)

For Respondents: Mrs. Dhanamadhri, GA
(in all WPs) for R1 to R3

: Mr.T.Pramod Kumar Chopda, SPC
for R4

C O M M O N O R D E R

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 re-considering 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 28.11.2012, on the file of the 1st respondent, are set aside and the matter is remanded back to the 1st 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 1st 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.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Assistant Commissioner (CT),
Thudiyalur Assessment Circle,
Coimbatore - 641018.
2. Joint Commissioner (Enf) (CT),
Coimbatore - 641018.
3. Joint Commissioner (CT),
Coimbatore - 641018.
4. The Secretary to Government of India,
The Union of India,
Department of Revenue,
New Delhi.

+1cc to the Government Pleader Sr.51331
+2cc to Mr.S.Raveekumar, Advocate Sr.51374

W.P.Nos.932 & 933 of 2013
and
M.P.No.1 of 2013 in W.P.No.932 of 2013
and
M.P.No.1 of 2013 in W.P.No.933 of 2013

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srg 06/08/2019