IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.43937 to 43939 of 2016
and
WMP.Nos.37765 to 37770 of 2016

M/s.Caparo Engineering India Ltd.,
Rep by Authorised Signatory
Mr.Neeraj Shrivastava No.T1, T2,
Sipcot Industrial Estate, Sunguvarchatram,
Sriperumbudur Taluk,
Kancheepuram - 602 105. ... Petitioner in all WPs.

vs

1.Assistant Commissioner (CT)
Nandambakkam Assessment Circle,
Chennai - 600 094.

2.Assistant Commissioner (CT)
Alandur Assessment Circle,
Chennai - 600 016.

3.State Bank of India,
Sunguvarchatram Branch,
Sriperumbudur Taluk,
Kancheepuram - 602 105. ... Respondents in all WPs.

PRAYER in WP.No.43937 of 2016: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus calling for the records leading to the issuance of the order dated 31st October 2016 in TIN.33170843995 / 2009 -10 passed by the 1st respondent herein and quash the same and further direct the 1st respondent to receive the Form H certificate and other such documents for the year 2009-10 filed by the petitioner before the 2nd respondent and pass revised orders as per the Circular / Clarifications issued by the commercial Taxes Department from time to time after providing an opportunity of personal hearing to the petitioner in the interest of justice.

PRAYER in WP.No.43938 of 2016: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus calling for the records leading to the issuance of the order dated 31st October 2016 in TIN.33170843995 / 2011 -12 passed by the 1st respondent herein and quash the same and further direct the 1st respondent to receive the Form H certificates and other such documents for the year 2011-12 filed by the petitioner before the 2nd respondent and pass revised orders as per the Circular / Clarifications issued by the commercial Taxes Department from time to time after providing an opportunity of personal hearing to the petitioner in the interest of justice.

PRAYER in WP.No.43939 of 2016: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus calling for the records leading to the issuance of the order dated 31st October 2016 in TIN.33170843995 / 2012 -13 passed by the 1st respondent herein and quash the same and further direct the 1st respondent to receive the Form H certificates and other such documents for the year 2012-13 filed by the petitioner before the 2nd respondent and pass revised orders as per the Circular / Clarifications issued by the commercial Taxes Department from time to time after providing an opportunity of personal hearing to the petitioner in the interest of justice.

For Appellant : Mr.N.Murali for M/s.K.Gowtham Kumar
(in all the petitions)

For Respondents : Mr.Mohammed Shaffiq,
SGP for R1 & R2 (in all the petitions)
: No Appearance for R3
(in all the petitions)

ORDER

Heard the learned counsel for the petitioner and the respondents.

2. These cases pertain to certain defects have been pointed out by the 1st respondent in Form-H submitted by the petitioner for claiming exemption under Section 5(3) of the CST Act, 1956.

3. The learned counsel for the petitioner submits that even if there are defects in Form-H, it is not open to the 1st respondent to demand duty under the provisions of the TNVAT Act, 2006. He further submits that as long as Form-H continue to be retained by the 1st respondent, the petitioner cannot rectify the mistake in the Form-H.

4. The learned Special Government Pleader appearing for the 1st and 2nd respondents Mr.Mohammed Shaffiq submits that the defective Form-H will be returned to the petitioner for rectification and therefore as and when the petitioner produces rectified Form-H, orders can be directed to be revised.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

6. The goods have been manufactured and cleared by the petitioner on the strength of the Form-H given by the buyers of the petitioner. It is on the strength of the Form-H, goods were cleared without payment of tax by the petitioner by availing the benefit of Section 5(3) of the CST Act, 1956. Therefore, the tax if any should be demanded from the buyers who issued Form-H on the strength of which the goods were cleared which were apparently defective.

7. However, it is practice to demand tax by denying the benefit of exemption under Section 5(3) of the CST Act on the suppliers/dealers like the petitioner. Therefore, I do not wish to disturb the existing practice which is being followed.

8. However, to meet the ends of justice, I am of the view, the 1st respondent may return the defective Form-H to the petitioner within a period of 30 days from the date of receipt of a copy of this order. The petitioner shall take steps to have the defective Form-H rectified within a period of 45 days thereafter and re-submit it along with its representation if any with the 1st respondent.

9. The 1st respondent shall therefore pass appropriate orders after considering the same within a period of three months from the date of a copy of this order.

With the above observation, all the three Writ Petitions are disposed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

drl

To

1.Assistant Commissioner (CT)
Nandambakkam Assessment Circle,Chennai - 600 094.

2.Assistant Commissioner (CT)
Alandur Assessment Circle,
Chennai - 600 016.

3.State Bank of India,
Sunguvarchatram Branch,
Sriperumbudur Taluk,
Kancheepuram - 602 105.

+1 cc to Government Pleader Sr.No. 105016
+1cc to Mr.K.Gowtham kumar , Advocate SR.No. 104810

W.P.Nos.43937 to 43939 of 2016
and
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A.SK(10/02/2020)