IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.12657 & 12658 & 12966 of 2013
and
W.M.P.Nos.1 & 2, 1 & 2 and 1 & 2 of 2013

M/s.Sunbeam Generators Pvt.Ltd,
Rep.by its Authorised Signatory-
K.M.Jainullabudeen,
Flat No.52 & 53, 6th Floor,
Voctoria Gardens,
Koyambedu, Chennai - 600 107.
... Petitioner in W.P.No.12657 of 2013

M/s.Genlite Engineering Pvt.ltd,
Rep by its Authorized Signatory K.Asokan,
No.42, Sterling Road, Nungambakkam,
Chennai - 600 034.
... Petitioner in W.P.No.12658 of 2013

M/s.Ojus Power Technologies Pvt Ltd,
Rep by its Authorized Signatory M.Gunasekaran,
Works at Survey Nos.944/1,945/1, Thorapalli Raod,
Mornapalli, Hosur - 635 109.
... Petitioner in W.P.No.12966 of 2013

Vs.

1.State of Tamil Nadu,Rep by its Secretary to Government,
Department of Commercial Taxes and
Registration Department,
Fort St.George, Chennai - 600 009.

2.The Authority for Clarification and
Advance Ruling,
Rep by its Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005. ...Respondents in all W.Ps.

3.The Commercial Tax Officer,
Tindivanam,
Villupuram District ... 3rd Respondent in W.P.No.12657 of 2013

4.The Assistant Commissioner (CT),
Sriperumbudur Assessment Circle,

Sriperumbudur,
Kancheepuram District.

5.The Commercial Tax Officer,
Poonamallee Enforcement,
Enforcement South,
Greams Road, Chennai - 600 006.
... 3rd and 4th Respondents in W.P.No.12658 of 2013

6.The Assistant Commissioner (CT),
Hosur (South) Assessment Circle,
Hosur.

7.The Commercial Tax Officer,
Enforcement, Group II,
Salem. .. 3rd and 4th Respondents in W.P.No.12966 of 2013

Prayer in W.P.No.12657 of 2013: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records on the files of the 2nd respondent in its impugned Proceeding in A.C.A.A.R.52/2011-12 - D.Dis Act Cell II/10832/2012 dated 27.07.2012 for the period upto 06.12.2012 quash the same.

Prayer in W.P.No.12658 of 2013: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records on the file of the 2nd respondent in its impugned Proceeding in A.C.A.A.R.77/2012-13 dated 20.02.2013 for the period upto 06.12.2012 quash the same.
Prayer in W.P.No.12966 of 2013: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records on the file of the 2nd respondent in its impugned Proceeding in A.C.A.A.R 77/2012-13 dated 20.02.2013 for the period upto 06.12.2012 quash the same.

For Petitioners : Mr.S.Rajesekar
(in all W.Ps)
For Respondents : Mr.Mohammed Shaffiq
(in all W.Ps)
Special Government Pleader
Assisted by Mr.A.N.R.Jayaprathap
Government Advocate

COMMON ORDER

Heard learned counsel for the petitioners and the learned counsel for the respondents.

2.Short point that arises for consideration in all these writ petitions relates to rate of tax on "generators and generating sets used for producing electricity" which are liable to tax at the rate prescribed under Entry No. 39 of part C of the 1st schedule to the Tamil Nadu VAT Act, 2006.

3.Since the issues are common, I am taking up all the 3 writ petitions and passing a common order.

4.The petitioners have impugned the orders of the 2nd respondent dated 27.07.2012 and 20.2.2013 issued under section 48-A of the Tamil Nadu VAT Act, 2006. The petitioner's have prayed for quashing of the impugned orders.

5.By a clarification dated 27.07.2012 (impugned in W.P.No. 12657 of 2013) the 2nd respondent has clarified that "Generators used for producing electricity" are taxable at the reduced rate at 5% under Tamil Nadu VAT Act, 2006 with effect from 12.7.2011 and 2% with "C" Form and 5% without "C" Form under the CST Act, 1956.

6. By a clarification dated 20.2.2013 (impugned in W.P.No. 12658 of 2013 and W.P.No. 12966 of 2013) the 2nd respondent has clarified that "Generating sets" are taxable at a reduced rate of 5% on and from 7.12.2012 and 14.5% up to 6.12.2012.

7.The need for clarification in respect of these goods arose on account of confusion in interpretation of the following notifications of the Government of Tamil Nadu,Commercial Taxes and Registration.:-

G.O.Ms.No	G.O Dated	Period	Rate of Tax	Reduced Rate of Tax	Product
G.O.Ms.No. 36	01.04.2008	01.04.2008 to 11.07.2011	12.5%	4%	Generators used for producing electricity

G.O.Ms.No	G.O Dated	Period	Rate of Tax	Reduced Rate of Tax	Product
G.O.Ms.No. 78	11.07.2011	12.07.2011 to 06.12.2012	14.5%	5% (increased 4% to 5%)	Generators used for producing electricity
G.O.Ms.No. 154	08.12.2012	07.12.2012	14.5%	5%	Generating Sets (Gen Sets) used for producing electricity
G.O.Ms.No. 156	09.12.2013	(Input tax Credit/Refund)			Generating Sets

8.However, the Government of Tamil Nadu by a later Notification dated 9.12.2013 circulated vide GO (Ms) No. 156 Commercial Taxes and Registration has given further clarification wherein it has been clarified as under copy of which was circulated by the learned counsel for the Petitioners.

> In exercise of the powers conferred by sub-sections (1) and (2) of Section 30 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), the Governor of Tamil Nadu hereby makes a reduction in the rate of tax from 12.5% to 4% upto 11.07.2011 and from 14.5% to 5% from 12.07.2011 in respect of tax payable under the said Act by any dealer on the sale of Generating Sets (Gen-sets) used for producing electricity in the State.
>
> 2.The reduction hereby made shall be deemed to have come into force on the 1st April 2008 and shall remain in force upto and inclusive of the 6th December 2012, subject to the following conditions:-
>
> (i)There shall be no refund of tax already collected at the rate of 12.5% or 14.5%, as the case may be, on the sale of Generating sets between 01.04.2008 and 06.12.2012, and remitted to the Government.
>
> (ii)Input Tax Credit shall be allowed at 12.5% from 01.04.2008 upto 11.07.2011 and at

14.5% from 12.07.2011 upto 06.12.2012 on the tax paid in the State on the purchase of Generating Sets during the above said period, provided tax is collected at the rate of 12.5% or 14.5%, as the case maybe, and remitted to Government on the sale of Generating sets in the State.

(iii) If the tax was collected at the rate of 12.5% or 14.5%, as the case may be, on the sale of Generating sets in the State between 01.04.2008 and 16.12.2012 but remitted to the Government at the rate of 4% or 5%, as the case may be, the difference in tax shall be remitted to the Government.

(iv) The input tax credit availed shall be restricted to 4% or 5%, as the case may be, if tax is paid at the rate of 12.5% or 14.5% on the purchase of Generating sets but collected and remitted to the Government at the rate of 4% or 55 on the sale of Generating sets in the State.

S.K.PRABAKAR

PRINCIPAL SECRETARY TO GOVERNMENT

SECTION OFFICER

9. Thus, "generators and generating sets used for producing electricity" are also liable to concessional rate of tax at 4% between 1.4.2008 to 11.7.2011 and thereafter at 5% from 12.7.2011 to 6.12.2012. However, any tax paid by the petitioners would be subject to the terms of notification dated 9.12.2013 circulated vide GO (Ms) No. 156 Commercial Taxes and Registration. As far as "generators and generating sets used for producing electricity" are concerned they have been all along subject to concessional rate of tax in terms of notifications at serial No 1 and 2 at 4% and 5%. Therefore, they are also liable to pay tax at 4% and 5% respectively.

10.In the light of the above, the impugned orders are quashed. Accordingly, all these three writ petitions stands allowed. Consequently, connected miscellaneous petitions are closed. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Department of Commercial Taxes and
Registration Department,
Fort St.George, Chennai - 600 009.

2.The Authority for Clarification and
Advance Ruling,
Rep by its Commissioner of Commercial Taxes,
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3.The Commercial Tax Officer,
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6.The Assistant Commissioner (CT),
Hosur (South) Assessment Circle,
Hosur.

7.The Commercial Tax Officer,
Enforcement, Group II,
Salem.

+3 cc to M/s.Hemalatha,Advocate,S.R.Nos.7934 7933 7932
+1cc to the Spl.Government Pleader, S.R.No.8159

W.P.Nos.12657 & 12658 & 12966 of 2013
and
W.M.P.Nos.1 & 2, 1 & 2 and 1 & 2 of 2013

MG(CO)
nvi/28.05.2020