IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.08.2020

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.21505 & 21506 of 2011
and
M.P.Nos.1 & 1 of 2011

Ultra Ready Mix Concrete (P) Ltd.,
36-38, 11th Street, Tatabad,
Gandhipuram, Coimbatore-641012. ...Petitioner in both WPs

Vs

1.Assistant Commissioner (CT),
Gandhipuram Assessment Circle,
Coimbatore.

2.Joint Commissioner (ENF) (CT),
Coimbatore.

3.Joint Commissioner (CT),
Coimbatore.

4.The Union of India,
Rep., by the Secretary to the
Government of India,
Department of Revenue, New Delhi.
...Respondents in both WPs

Prayer in W.P.No.21505 of 2011: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the proceedings of the first respondent in TNVAT 33622182784/2007-08 dated 16.08.2011 and quash the same.

Prayer in W.P.No.21506 of 2011: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the proceedings of the first respondent in TNVAT 33622182784/2008-09 dated 22.08.2011 and quash the same.

For Petitioner : Mr.S.Ravee Kumar
(in both cases)

For Respondents: Mr.R.Swarnavel GA for R1 & R2
(in both cases)

COMMON ORDER

Today, the matter is called through video conferencing. By consent of both the parties, these writ petitions are taken up for final disposal.

2. Though the authorities herein have proposed to levy 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.

3. On this aspect, a Hon'ble 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 Hon'ble Division Bench before the authorities for the purpose of reconsidering the same.

4. In the light of the decision rendered by the Hon'ble Division Bench of this Court and in view of the observations made above, the impugned orders dated 16.08.2011 and 22.08.2011 are set aside and the matters are remanded back to the first respondent for reconsideration. During the course of such reconsideration, the petitioner herein is granted liberty to file his objections along with necessary copies of the decisions relied upon by him and on receipt of such objections, the first 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.

5. Accordingly, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

hvk

To

1.Assistant Commissioner (CT),
Gandhipuram Assessment Circle,
Coimbatore.

2.Joint Commissioner (ENF) (CT),
Coimbatore.

3.Joint Commissioner (CT),
Coimbatore.

4.The Secretary to the Government of India,
The Union of India
Department of Revenue,
New Delhi.

+2cc to Mr.S.Raveekumar, Advocate SR.26358
+1cc to the Government Pleader(Taxes) SR.26481

W.P.Nos.21505 & 21506 of 2011
and
M.P.Nos.1 & 1 of 2011

KK(CO)
CB(22/10/2020)