IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P. No.35313 of 2005
(OP.No.1204 of 2003)

Lion Dates (Pvt) Limited,
No.4A/2, Cauvery Road,
Trichy - 620 002. ... Petitioner

Vs.

1.The Commercial Tax Officer,
Rockfort Assessment Circle,
Tiruchirapalli.

2.The Special Commissioner &
Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005. ... Respondents

This above Petition was originally filed before the Tamil Nadu Taxation Special Tribunal and numbered as O.P.No.1204 of 2003. The said O.P was filed under Section 7 of the Tamil Nadu Act 42 of 1992 to call for the records on the files of the Second Respondent herein in L.Diks.Acts Cell-II/4330/2003 - Clarification No.40/2003 dated 27.1.2003, quash the proceedings of the Second Respondent herein in L.Dis.Acts Cell-II/4330/2003 - Clarification No.40/2003 dated 27.1.2003. Consequent to abolition of the above Tribunal, the said O.P was transferred to this Court and renumbered as W.P.No.35313 of 2005 (this Writ Petition).

For Petitioner : Mr.K.A.Parthasarathy
for N.Inbarajan

For Respondents: Mr.A.N.R.Jayaprathap,
Government Advocate

ORDER

The present Writ Petition in Original Petition in O.P.No.1204 of 2003 before the Tamilnadu Taxation Special Tribunal, Chennai. Consequent to the abolition of the aforesaid Tribunal the said OP was transferred to this Court and re-numbered has W.P.No.35313 of 2005 in the present Writ Petition. It appears that the petitioner had also filed for an almost identical relief in W.P.Nos.16166 to 16168 of 2008 wherein the petitioner had prayed for the following relief:-

> Prayer in W.P.Nos.16166 to 16168 of 2008:- Petitions filed under Article 226 of the Constitution of India praying to issue a writ of declaration to declare that the Clarification No.40/2003 issued by the first respondent in L.Dis.Acts Cell II/4330/2003 dated 27.1.2003 shall have only prospective in application from the Assessment Year 2003-2004 and consequently declare that the impugned Assessment Order passed by the 2nd respondent dated 02.08.2007 in the petitioner's TNGST Nos.9400949/2002-2003, 3401331/2002-2003 & 3400368/2002-2003 as illegal and unsustainable in law.

2.As is evident from reading of above prayer, it is comprehensive to declare the impugned circular which has been impugned in the present Writ Petition as well as for declaring the assessment order passed by the Commercial Tax Officer as illegal and unsustainable in law. While passing order in W.P.No.16166 to 16168 of 2008, the learned Single Judge has held as under:-

> 17.That apart, the impugned clarification is beyond the scope of Entry 9 of the Eleventh Schedule. The impugned clarification states that foreign goods whether imported directly from other countries or purchased from other states, the expression "purchase from other States" is conspicuously absent in Entry 9 of Eleventh Schedule. Therefore, by virtue of clarification, the respondent cannot add any expression or phraseology, which is not contained in the statute. Therefore, the impugned clarification has to be necessarily held to be bad in law. Further more, the Hon'blle Division Bench has observed that the said clarification cannot be given retrospective effect, which is precisely what the respondents have done in the case of the petitioners. Therefore, such retrospective application of the clarification was also illegal.

3.Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the records.

4.Since, the above passage from Writ Petition in W.P.Nos.16166 to 16168 of 2008 answers the issue is in favour of the petitioner, I am inclined to allowed the Writ Petition.

5.Accordingly, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer,
Rockfort Assessment Circle,
Tiruchirapalli.

2.The Special Commissioner &
Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

+1cc to the Special Government Pleader Sr.7735
+1cc to Mr.Inbarajan, Advocate Sr.6927

W.P. No.35313 of 2005

mg[co]
srg 05/03/2020