IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.NO.22474 OF 2015
AND
M.P.NO.1 OF 2015

M/s.Indus Towers Limited,
Represented by its Finance Head
(Tamil Nadu Circle),
Mr. Sunil Sehgal,
Espee IT Park, 5 (NP),
Jawaharlal Road,
5th Floor, Ekkattuthangal,
Chennai – 600 097. ...Petitioner

.Vs.

1. The Union of India,
Represented by the Secretary to Government,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

2. The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes Department,
Fort St. George,
Chennai – 600 009.

3. The Commissioner of Commercial Taxes,
Ezhilagam Buildings,
Kamarajar Salai, Chepauk,
Chennai – 600 005.

4. The Assistant Commissioner (CT),
Guindy Assessment Circle,
No. 46, Greenways Road,
Chennai – 600 028.

5. The Commissioner of Service Tax,
Central Revenue Bhawan,
Plot No.36, Sector – 32,
Gurgaon, Haryana. ... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records comprised in impugned order TIN No.33560803089/2010-2011 dated 22.06.2015 on the file of the Fourth Respondent, quash the same.

For Petitioner	:	Ms.Jayalakshmi For Mr.S.Muthuvenkataraman
For Respondents	:	Mrs.G.Dhana Madhri Government Advocate (Taxes)

O R D E R

(Through Video Conference)

Heard Ms.Jayalakshmi, Learned Counsel appearing for the Petitioner and Mrs.G.Dhana Madhri, Learned Government Advocate appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order No.TIN/ 33560803089/2010-2011 dated 02.06.2015 passed by the Fourth Respondent assessing the passive infrastructure services to telecom operators provided by the Petitioner for the year 2010-2011 under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short).

3. It is brought to the notice of this Court by the Learned Counsel appearing for the Petitioner that similar orders of assessment against the Petitioner for the years 2008-2009 and 2009-2010 was assailed by the Petitioner in the Writ Petitions in W.P.Nos.31167 and 31168 of 2014 and this Court by elaborate order dated 17.03.2020 after discussing various judicial decisions, arrived at the conclusion that the Petitioner would not be liable for tax under the provisions of the TNVAT Act and has quashed the same. On that premise, it is claimed that the same benefit would have to be extended to the Petitioner for the wrongful assessment made against the Petitioner for the year 2010-2011 under the TNVAT Act in the impugned proceedings

4. Having regard to the aforesaid submissions made by the Learned Counsel appearing for the Petitioner, which deserves acceptance, there is no justification to deny the Petitioner of the same benefit for the assessment year 2010-2011, which has

been granted for the years 2008-2009 and 2009-2010 in the order dated 17.03.2020 in W.P.Nos.31167 and 31168 of 2014 passed by this Court.

*** 5. In that view of the matter, the impugned Order No.TIN/ 33560803089/2010-2011 dated 02.06.2015 passed by the Fourth Respondent is quashed. The Respondents shall not be entitled to recover the value added tax demanded from the Petitioner in the impugned order.**

The Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)
23/12/2021

*** Corrected as per Order dated 04/04/2022 made in W.P.No.22474 of 2015**
Sd/-
Assistant Registrar(CS III)
13/04/2022

//True Copy//

Sub Assistant Registrar

vjt/dm

To

1. The Secretary to the Government of India,
   Ministry of Finance,
   Department of Revenue,
   North Block, New Delhi.

2. The Secretary to the Government of Tamil Nadu,
   Commercial Taxes Department,
   Fort St. George,
   Chennai - 600 009.

3. The Commissioner of Commercial Taxes,
   Ezhilagam Buildings,
   Kamarajar Salai,
   Chepauk,
   Chennai - 600 005.

*** Corrected Order To be Substituted to the Order already despatched on 28/12/2020**

4. The Assistant Commissioner (CT),
   Guindy Assessment Circle,
   No. 46, Greenways Road,
   Chennai - 600 028.

5. The Commissioner of Service Tax,
   Central Revenue Bhawan,
   Plot No.36, Sector - 32,
   Gurgaon, Haryana.

+1cc to the Special Government Pleader (Taxes), ***S.R.No.23259**
*** +1cc to Mr.R.Gunaalan, Advocate, S.R.No.22651**

W.P.NO.22474 OF 2015

SR-II(CO)
KKV/23/12/2020
RSI(CO)
PBS/18/04/2022