IN HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.4743 to 4745 of 2013
and
M.P.Nos.1, 1, and 1 of 2013

M/s. Aumund Engineering Pvt. Ltd.,
No.5, Laxmi Neela Rite Choice Chambers,
Above SBI, Bazullah Road,
T.Nagar, Chennai - 600 017. ...Petitioner in all W.Ps.

Vs.

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (CT),
T. Nagar North Assessment Circle,
Taluk Office Building,
Greenways Road, Chennai - 600 028. ...Respondents in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his proceedings in CST No.690328/2010-11, CST No.690328/2011-12 and CST No.690328/2012-13 (April 2012 to November 2012) dated 28.01.2013 and quash the order passed therein and direct the respondent to drop all further proceedings in the matter.

For Petitioner : Mr.R.L.Ramani, Senior Counsel for
Mr.B.Raveender
in all W.Ps.

For Respondents: Mr.A.N.R.Jayaprathap
Government Advocae (T)
in all W.Ps.

COMMON ORDER

Heard the learned Senior Counsel for the petitioner and the learned Government Advocate for the respondents.

2. By this common order all the writ petitions are being disposed in the light of the clarification dated 28.10.2016 issued by the Additional Chief Secretary/Commissioner of Commercial Taxes who has clarified as under:-

> The BHEL Small and Medium Industries Association, Trichy have contended in their representation that they are ancillary units of BHEL, Trichy. They supply goods to the customers of BHEL located in other states, as per instructions of BHEL treating the sales as inter-state sales under Central Sales Tax Act, 1956. BHEL in turn effects transit sales to other State buyers. But their claim is not entertained by this assessing authorities on the ground that the seller and the buyer are located within the State and hence, the E-1 declaration which they claim for production to BHEL is being denied by the assessing authorities.
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> 2.As per Section 3 of CST Act, a sale would fall under the definition of interstate sales, if such sale occasions the movement of goods from one State to another State. Such interstate sales can also be effected by transfer of documents of title to the goods (by endorsement of LR/RR in favour of the buyer) during their movement from one State to another. Therefore, the main criteria which decides the nature of inter-state sales is not the location of the buyer and seller, but the interstate movement of goods and the link between such interstate movement of goods and the contract of sales. Therefore, as long as there is an inextricable link between the agreement of sales and the interstate movement of goods, two local dealers situated within the state can effect interstate sales. Similarly, even if the buyer and the seller are located in different States and if there is no interstate movement of goods in connection to the sale effected between them or there is no link between the sale and the interstate movement of goods, such sale would not fall under the definition of interstate sales. The above ratio has been upheld in many High Court and Supreme Court judgments.
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> 3.As far as the sale in the course of

interstate movement of goods by transfer of documents of title to goods, which is called transit sales is concerned, the Hon'ble Madras High Court has held in the case of M/s.Duvent Fans Pvt.Ltd Vs.Sate of Tamil Nadu in ((1999) 113 STC 431 (Madras)) that two local dealers can effect such transit sales. The objections raised by AG against exemption allowed on such sales was not accepted by the Department and based on the above judgment of the High Court, the connected paras were also dropped. In the above circumstances, the view taken by the assessing authorities of Trichy Division to deny the inter-state sales and issue of E1 declaration to the ancillary units of BHEL for the transit sales effected by BHEL under Section 6(2) of Central Sales Tax Act, 1956 is not legally correct. Therefore, all the assessing authorities are instructed to allow such inter-state sales and issue E1 certificate, in case the conditions prescribed under Section 3 and 6(2) of Central Sales Tax Act, 1956 are fulfilled.

3. It appears that the 2nd respondent has also passed orders following the above circular under similar circumstances for the Assessment Years 2013-14, 2014-15 and 2015-16 vide orders dated 31.07.2017, 20.06.2019 and 06.06.2019 respectively.

4. In the light of the above, these writ petitions are disposed with the direction to the 2nd respondent to pass appropriate orders considering the above clarification dated 28.10.2016 of the Additional Chief Secretary/Commissioner of Commercial Taxes within a period of three months from the date of receipt of a copy of this order.

5.The petitioner may file its objections/representations before the 2nd respondent within a period of thirty days from the date of receipt of a copy of this order. The 2nd respondent shall also consider the same and pass appropriate orders within the aforesaid period of three months after affording an opportunity of hearing to the petitioner. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (CT),
T. Nagar North Assessment Circle,
Taluk Office Building,
Greenways Road, Chennai - 600 028.

W.P.Nos.4743 to 4745 of 2013
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+1 cc to Spl Government Pleader Tax Sr.No. 14700
ssd co
A.SK(17/03/2020)