IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 12.03.2020
CORAM
THE HON'BLE MR.JUSTICE R.MAHADEVAN
W.P.No.8160 of 2014
and M.P.No.1 of 2014

M/s.A.K.Enterprises
rep. by its Partner B.Manoharan
Plot Nos.105 to 107, Sidco Womens
Industrial Park
Thirumullaivoyal, Chennai - 62 ...
Petitioner

Vs.

1.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk
Chennai-5

2.The Commercial Tax Officer
Villivakkam Assessment Circle
5, High Court Colony
Villivakkam, Chennai -49
... Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorari to call for the records of the second respondent in his proceedings in CST No.844269/2010-11 dated 11.02.2014 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan
For Respondents : Mr.A.N.R.Prathap, GA (T)

ORDER

Challenging the order dated 11.02.2014 passed by the 2nd respondent, relating to the assessment year 2010-11, the petitioner has come up with the present writ petition. In the impugned order, it is stated that the petitioner has manufactured the goods and sold the same to local registered dealers only and not to other State dealers and they themselves issued E1 form to the local registered dealers, which is not acceptable as per Section 6(2) of the CST Act and as per Rule 4 of the CST Rules and hence, the said sales are not eligible to avail concessional rate of tax under CST Act 1956; and accordingly, the petitioner was directed to pay tax at 12.5% on a total and taxable turnover of Rs.1,48,25,354/-.

2.Today, when the matter was taken up for consideration, the learned counsel for the petitioner produced a copy of the circular dated 28.10.2016 bearing No.12/2016 (Acts Cell -IV/ 26153/2016) issued by the Additional Chief Secretary / Commissioner of Commercial Taxes, Chepauk, Chennai-5, wherein, all the assessing authorities were instructed to allow inter-state sales and issue E1 certificate in case the conditions prescribed under Section 3 and 6(2) of CST Act are fulfilled. The learned counsel further submitted that following the said circular, the Assistant Commissioner (ST), Thirumullaivoyal Assessment Circle, vide order dated 30.04.2019, has revised the assessment of the petitioner for the year 2013-14, after having observed that the inter-state sales effected under Section 3(a) of the CST Act, are eligible to charge tax at 2% against 'C' Forms. Hence, the learned counsel sought to allow this writ petition by setting aside the order impugned herein.

3.The learned Government Advocate (T) appearing for the respondents has fairly conceded the submissions so made by the learned counsel for the petitioner.

4.After hearing both sides and upon perusal of the materials, more particularly, the circular issued by the Additional Chief Secretary/ Commissioner of Commercial Taxes, Chennai dated 28.10.2016 and the revised order dated 30.04.2019 passed by the Assistant Commissioner (ST), Thirumullaivoyal Assessment Circle in respect of the assessment year 2013-14, which categorically held that the inter-state sales falling under Section 3(a) of the CST Act, are attracting tax at 2% against 'C' Forms, this Court has no hesitation to set aside the order impugned herein.

5.Accordingly, the order dated 11.02.2014 passed by the second respondent relating to the assessment year 2010-11, is set aside and the matter is remitted to the second respondent for passing a fresh order, in the light of the circular dated 28.10.2016 and the revised assessment order dated 30.04.2019, as referred to above. Such an exercise shall be completed by the second respondent, within a period of six weeks from the date of receipt of a copy of this order, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner.

6.This writ petition stands allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk
Chennai-5

2.The Commercial Tax Officer
Villivakkam Assessment Circle
5, High Court Colony
Villivakkam, Chennai -49.

+1cc to Mr.Ramanathan, Advocate, S.R.No.21948
+1cc to the Government Pleader, S.R.No.22820

W.P.No.8160 of 2014
and
M.P.No.1 of 2014

SSV(CO)
EU 26.6.2020