IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.16454, 16458, 16459, 16460, 16464,
16461, 16462 & 16465 of 2020
and
WMP.Nos.20435, 20436, 20433 & 20434 of 2020

Power House
(Represented by its Proprietor J.Srinivasan)
No.12/30 Dr.Subbarayan Nagar 4th Street,
Kodambakkam Chennai 600024. .. Petitioner (in all WP's)

Vs

The Assistant Commissioner (ST)
Kodambakkam Assessment Circle
PAPJM Building Annex IV Floor
Greams Road, Chennai 600 006. ..Respondent (in all WP's)

Prayer WP.No.16454,16458,16459,16461 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the records on the files of the Respondent herein in CST / 767734 / 2014-15,2015-2016,2016-2017,2017-2018 respectively dated 12.10.2020 quash the same while directing the Respondent herein to rectify the assessment order in CST / 767734 / 2014-15,2015-2016,2016-2017,2017-2018 respectively dated 16.09.2019 24.01.2020,11.10.19 & 18/11/2019 respectively and apply the rate of 5% on the inter-State sales effected by the Petitioners of the manufactured goods, namely, motors for industrial application, as prayed for by the petitioners in their application dated 12.10.2020.

Prayer WP.No.16460,16462,16464,16465 of 2020:
Calling for the records on the files of the Respondent herein in CST/ 767734/ 2014-15,2015-2016,2016-2017,2017-2018 respectively dated 16.9.2019,24.01.2020,11.10.2019 & 18.11.2019 respectively quash the same in so far as it imposs higher rate of tax at 14.5 percentage instead of 5 percentage on the turnover of Rs.31 001/- Rs.64 370/- and Rs.14 70 887/-,Rs.99 04 594/-,Rs.99 934,Rs.20 30 513,Rs.53 241/-, Rs.10 44 510 & Rs.2 88 753 respectively.

For Petitioner : Mr.N.Prasad
For Respondent : Ms.G.Dhana Madhri
Government Advocate

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COMMON ORDER

W.P.Nos.16460, 16462, 16464 & 16465 of 2020 challenge orders of assessment dated 16.09.2019, 24.01.2020, 11.10.2019 and 18.11.2019 for the periods 2014-15, 2015-16, 2015-16 and 2017-18 respectively under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'). W.P.Nos.16454, 16458, 16459 and 16461 of 2020 challenges the orders of rectification all dated 12.10.2020 rejecting the applications for rectification filed by the petitioner under Section 84 of the Act.

2. The issue in both sets of writ petitions is one and the same. Pursuant to orders of assessment, the petitioner appears to have filed applications on 12.10.2020 seeking rectification of the assessments under Section 84 of the Act on two grounds. Firstly, the petitioner relies on a circular of the Commissioner of Commercial Taxes dated 29.06.1999 to the effect that in assessments wherein a higher rate of tax is imposed on the ground that C Form declarations were not filed, assessee's are entitled to seek additional time even after completion of assessment to file 'C' Form declarations and such declarations once filed, should be taken into account by the assessing authority and suitable relief granted, if the declarations were found to be in order. Accordingly, the petitioner prayed for a period of three months in the Section 84 applications to file the declaration forms.

3. Secondly and without prejudice to the request for time, the petitioner submitted that it had effected sales of capital goods, being motors for industrial application. The buyers are stated to be engaged in the activity of manufacture of boilers and textile machinery. Thus, alternatively, the petitioner had submitted that the rate of tax would be that applicable to capital goods i.e. 5% in terms of Section 2(11) of the Central Sales Tax Act, 1956 (CST Act) read with entry 25/Part B/1st Schedule of the Act under Section 8(2) of the CST Act.

4. Reliance was placed on decisions of the Madras and Gujarat High Courts in Engine Valves Limited V. Union of India (90 STC 84) and State of Gujarat V. Reliance Industries Ltd. (98 VST 121) respectively. In conclusion, the petitioner prayed for (i) the grant of three months time to file declaration forms and al-

ternatively (ii) that the transactions be taxed at the rate of 5% without declaration forms.

5. The impugned orders have been passed on the same day when the applications for rectification were filed. In the narration to the order the Officer extracts the entirety of the application filed. However, in the operative portion extracted below, he considers only the first limb of the prayer seeking additional time to file the declaration forms.

> 'The application filed by the dealers under Section 84 of the TNVAT Act 2006 has been considered very carefully. The Assessment has already been completed and final demand raised on 16.09.2019. Though more than one year has lapsed from the receipt of the orders, the dealers have neither filed an appeal or discharged their final demand of taxes as per the order. On issue of notice for recovered of taxes after a period of more than one year due to COVID 19, the dealers have filed this application, which is not entertainable as the final assessment as already been completed and the dealers are not in possession of any C Forms.'

6. The conclusion of the authority to the effect that more than sufficient time has been granted to the petitioner to file the Forms and thus the request for additional time is not liable to be granted, is correct. The learned counsel for the petitioner would submit even at this juncture that the requisite forms are unavailable and thus I find no infirmity in the conclusion of the Officer to the fact that additional time is not liable to be granted. The impugned order to this extent, is confirmed. However, the alternate prayer raised by the petitioner has been omitted to be considered though noted expressly in the impugned order. To this extent the impugned order is incomplete.

7. The petitioner will thus appear before the Assessing officer on Friday the 4th of December, 2020 at 10.30 a.m. and put forth its argument in regard to the alternate prayer. No further notice need be issued in this regard. After hearing the petitioner, orders shall be passed on the alternate prayer raised, within a period of two weeks from date of personal hearing i.e. on or before 18.12.2020.

8. These writ petitions are disposed in terms of the above directions. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
The Assistant Commissioner (ST)
Kodambakkam Assessment Circle
PAPJM Building Annex IV Floor
Greams Road, Chennai 600 006.

+1cc to Mr.N.Inbarajan, Advocate SR.No. 37475
+1 cc to Spl Government Pleader Sr.No. 37801

W.P.Nos.16454, 16458, 16459, 16460, 16464,
16461, 16462 & 16465 of 2020
and
WMP.Nos.20435, 20436, 20433 & 20434 of 2020

A.SK(07.01.2021)