BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.01.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
WP(MD)No.20120 of 2013
and
MP(MD)No.1 of 2013

M/s.Genpower Diesel Sales & Service,
Rep.by its Proprietor ... Petitioner

Vs.

The Assistant Commissioner (CT),
Srirangam Assessment Circle,
Trichy – 20. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent in his proceedings in TIN 33053541922/2010-11, quash the assessment order dated 30.09.2013 passed therein.

For Petitioner : Mr.Raja Jeyachandra Paul

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.The subject matter of the writ petition pertains to the year 2010-11. The petitioner is engaged in selling of what is known in common parlance as Home UPS. The question that arises for my consideration is whether it will have to suffer tax at 4% or 12.5%. There is no dispute that UPS ie., Uninterrupted Power Supply has to be levied tax only at 4%. The respondent took the stand that the case on hand will come under Entry No.69 of Part C of the First Schedule of the Tamil Nadu Value Added Tax, 2006. But the said Entry is a residual clause. In other words, the said entry will come into play only if the goods in question is not specified in any of the other entries.

3.The specific stand of the petitioner is that the case on hand comes under Entry No.68(27) of Part B of the First Schedule of the Act. Entry No.68(27) deals with Uninterrupted Power Supply. When the petitioner was visited with an adverse order on the earlier occasion, the petitioner filed WP(MD)No.16746 of 2012 and the matter was remitted to the file of the respondent to pass orders afresh in accordance with law. Even after remand, the respondent has taken the stand that the goods in question will have to be levied tax only at 12.5% and not 4%. The respondent in the impugned order has set out a large number of reasons which distinguish UPS and Home UPS/Inverters.

4.Technically the respondent is right as the two function in different ways. But the question is whether they are essentially one and the same. The issue is no longer res integra. The Hon'ble Division Bench of the Punjab and Haryana High Court in the decision reported in (2011) 38 VST 159 (P&H) (Goyal Motor Parts vs. State of Punjab and another) tasked certain expert bodies to go into the issue and submit a report. It was observed therein that according to the certificate issued by the Department of Electrical Engineering, Indian Institute of Technology, Delhi and the report given by the Punjab Engineering College, Chandigarh, during testing, the devices fulfilled all the conditions of uninterrupted power supply. There was no rebooting under different conditions when the device was put to use on UPS mode. This device could be used both as inverters as well as in computers.

5.The Hon'ble Division Bench of the Punjab and Haryana High Court held that the product in question would fall within an Entry that corresponds to Entry No.68(27) of Part B of the First Schedule of the TNVAT Act as claimed by the assessee/dealer. It is seen that without referring to the aforesaid decision of the Hon'ble Punjab and Haryana High Court, the Division Bench of the Bombay High Court has also taken an identical view in the decision reported in (2016) 87 VST 390 (Bom) (Addl. Commissioner of Income Tax vs. Sun Systems). The operative portion of the said order reads as follows :

> "6.The Tribunal found that the lengthy discussion in the Commissioner's order omits from consideration the plain language of the entry. If the information technology products which are extensively used in modem day business and even at home require uninterrupted power supply then any facility or product ensuring uninterrupted power supply with its parts ought to relate to the information technology products. That is how the serial No. 56 the entry reads as above. In the light of the subsequent developments, the notification has been issued. Once the uninterrupted power supply and its parts have been specifically made referable to entry No. 56, then, there was no warrant for invoking and applying the residuary entry merely because that guarantees higher revenue. The approach of the Tribunal is precisely on these lines. Once the product in question has been classified in the light of the plain and clear language of the entry, then, we do not see any question of law arising for our determination and consideration in these appeals. The appeals are dismissed."

6.The case on hand is absolutely similar. Therefore, sustaining the contention urged by the learned counsel for the petitioner, the order impugned in the writ petition is set aside. This writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Assistant Commissioner (CT),
Srirangam Assessment Circle,
Trichy – 20.

+1 CC to M/s.S.RAJA JEYACHANDRA PAUL,Advocate (SR-1524[F] dated 21/01/2021)

WP(MD)No.20120 of 2013
and
MP(MD)No.1 of 2013
20.01.2021

(VR)CO
AP(08/02/2021) 3P 3C