BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.6811 to 6814 of 2018 and
W.M.P.(MD)Nos.6522 to 6525 of 2018

M/s.Fe Nerve Building,
Rep. by its Proprietor M.Balamurugan,
No.1, Madurai Road,
Kaliamman Koil New Street,
Thiruppathur, Sivagangai District. ... Petitioner in all petitions

Vs.

The Commercial Tax Officer-II,
Commercial Tax Building,
Thanjavur. ... Respondent in all petitions

Prayer in W.P.(MD)No.6811 of 2018 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in TIN 33213825365/2011-12 dated 29.01.2018 and quash the same as illegal and against the principles of natural justice.

Prayer in W.P.(MD)No.6812 of 2018 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in TIN 33213825365/2012-13 dated 29.01.2018 and quash the same as illegal and against the principles of natural justice.

Prayer in W.P.(MD)No.6813 of 2018 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in TIN 33213825365/2013-14 dated 29.01.2018 and quash the same as illegal and against the principles of natural justice.

Prayer in W.P.(MD)No.6814 of 2018 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in TIN 33213825365/2014-15 dated 29.01.2018 and quash the same as illegal and against the principles of natural justice.

(in all W.Ps.)
For Petitioner :Mr.N.Sudalai Muthu,
for Mr.S.Karunakar.

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

* * *

COMMON ORDER

Heard the learned counsel on either side.

2. Tvl. Fe Nerve Building has filed these four writ petitions in respect of the assessment years 2011-12, 2012-13, 2013-14 and 2014-15. The petitioner is a manufacturer of pre engineered steel structure. The case of the petitioner is that the petitioner is liable to pay tax at the rate of 4% or 5%. They are remitting tax on that basis. However, pre-revision notice came to be issued. The petitioner offered their reply. After granting an opportunity of personal hearing, the impugned orders were passed. The respondent chose to levy tax at the rate of 12.5%/14.5%, on the strength of Letter No.Vat Cell/763/2007/VCC33 dated 12.03.2007 and Circular No.54/2014 in Ref.No.D3/34875/2014 dated 14.11.2014. In the said circulars, the Commissioner of Commercial Taxes, Chennai, had directed the assessment officers to levy tax at the rate of 12.5%/ 14.5%. Based on the same, the impugned orders have been passed. They are assailed in these writ petitions.

3. Though the writ petitioner herein had taken a specific ground that the commodities in question are declared goods as specified in Section 14 of the CST Act 1956 which should be assessed only as 5% and not as 14.5%, in the counter affidavit this contention has not at all been dealt with.

4. The rate of tax cannot be determined with reference to the circulars issued by the administrative authorities. The petitioner's counsel draws my attention to the order dated 27.03.2014 in W.P.(MD) No.5866 of 2010(M/s.Veesons Energy Systems (P) Limited V. The Commissioner of Commercial Taxes, Chennai and another). In the said order, it was held as follows:-

> "16. Therefore, from a conjoint reading of the above judgments and the provisions, it is clear that the first respondent had no powers to issue any circular or clarification. Further section 48 A was introduced with effect from 27.09.2011. Any order by the State Level Authority for Clarification and Advance Ruling under Section 48 A can only be made regarding any clarification on rate of tax on an application by a dealer. Even there, the first respondent has no powers to individually or independently issue any clarification on rate of tax. It is also clear that the first respondent does not have any authority to issue circulars or clarifications on any other matters other

than rate of tax. The first respondent cannot use the circulars or clarifications to overcome the provisions of the statute. Any interpretation which was not intended by the legislature also cannot be introduced by way of circulars or clarifications. Any change in the statute can be brought in only by way of amendment. The levy of tax must be within the four corners of law and must not be based on surmises and conjunctures. Any act contrary to the provisions of the taxing statute would be hit by Article 265 of the Constitution of India. Therefore, the impugned circular issued without authority is set aside. The petitioner is directed to submit their objections within four weeks from the date of receipt of a copy of this order and the second respondent shall consider the objections and pass orders independently sticking on to the provisions of the Act. In the result, the Writ Petition is allowed. No costs."

5. Respectfully following the aforesaid ratio, the orders impugned in these writ petitions are quashed. The writ petitions are allowed.

6. Even before commencing his argument, the learned counsel appearing for the petitioner undertakes that the petitioner will pay a sum of Rs.2,00,000/- covering the demand set out in the writ petitions within a period of two weeks from the date of receipt of a copy of this order. However, the payment of this amount will be without prejudice to the petitioner's contentions and they would abide by the final orders to be passed by the respondent.

7. I make it clear that in respect of the defects set out in the impugned orders, the respondent will have to pass orders afresh in accordance with law. The respondent will have to issue fresh notice to the petitioner herein and the petitioner is at liberty to file their objections. If the respondent is not satisfied with the explanation of the petitioner, after affording an opportunity of personal hearing, orders afresh will be passed in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

PMU

To:
The Commercial Tax Officer-II,
Commercial Tax Building,
Thanjavur.

+1 CC to M/s.SPL GP (SR-9182[F] dated 05/03/2021)

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-9351[F] dated 08/03/2021)

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GS (07.05.2021) 4P 4C