IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2015

CORAM:

THE HONOURABLE Mr.JUSTICE.R.MAHADEVAN

W.P.Nos.37368 and 37369 of 2015
and M.P.Nos.1 & 2 of 2015

M/s. Aakavi Spinning Mills P Ltd
2A Pichankadu B.P.Agraharam Post
Erode-638 005 Rep. by its Director
Mr.R.Selvaraj [Petitioner in both Petitions]

Vs

1 State of Tamil Nadu
Rep. by its Secretary to Government
Commercial Taxes and Registration Department
Fort St. George chennai - 600 009

2 The Authority For
Clarification and Advance Ruling
Rep. by the Commissioner of Commercial Taxes
Ezhilagam Chepauk Chennai - 600 005

3 The Assistant Commissioner (CT)
PeriyaAgraharam Assessment Circle
Erode

[Respondents in both petitions

Writ petitions have been filed under 226 of the Constitution of India for the issuance of writ of certiorari calling for the records of the Authority for Clarification and Advance Ruling the 2nd Respondent on issuing a clarification and advance ruling on the taxability of hank yarn in its Proceedings in A.C.A.A.R.22/2012-13 dated 14.02.2013 and also to call for the records of the 3rd Respondent in issuing the impugned proceedings in TIN NO.33243076654/2012-13 and 2013-14 respectively dated 12.10.2015 and quash the same as not maintainable as per the express provisions made under section 48-A of the TN VAT Act 2006.

For Petitioner : Mr.R.S.Pandiyaraj
For Respondents : Mr.S.Kanmani Annamalai, AGP

ORDER

Heard Mr.R.S.Pandiyaraj, learned Counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who took notice for the respondents and with their consent, the main writ petitions are taken up for disposal.

2. These writ petitions are filed challenging the clarification dated 14.02.2013 and also the show cause notices dated 12.10.2015.

3.1 The petitioner is a manufacturer of yarn out of Viscose Staple Fibre (VSF) for the past 15 years and not manufacturing year out of other fibres viz., Cotton or Polyester. It is the case of the petitioner that they manufacturer yarn either by way of Hank or by way of Fabric or by way of Cone Yarn, depending upon the market requirements. It is the further case of the petitioner that whenever any Cone Yarn is manufactured out of VSF in Cone form, they are paying 5% VAT, as it is not exempted. However, when they manufacture and sells hank yarn, on the reason of it being exempted, is not paying any VAT as it is listed in Entry 44 of Part B of IV Schedule.

3.2 According to the petitioner, under Entry No.44 of Part B of the IV Schedule, the commodity viz., "Hank Yarn" is provided as an exempted goods and accordingly, no VAT is required to be collected on the sale of Hank Yarn, which is having a distinct commodity code No.744, whereas yarns other than Hank Yarn are falling under different commodity code numbers depending upon their nature and fiber. However, hank yarn alone is classified under commodity code No.744 irrespective of any fiber it is made out.

3.3 Further, according to the petitioner, the Commissioner of Commercial Taxes, in its clarification dated 29.03.2007 has clarified that Hank Yarn includes hemp yarn manufactured using raw materials other than cotton yarn also exempted from tax under Entry 44 of Part B of the IV Schedule to TNVAT Act, 2006, with effect from 01.01.2007.

3.4 When that being the legal position, the 2nd respondent, while issuing a clarification and advance ruling on the taxability of 'hank yarn' in its proceedings dated 14.02.2013, under Section 48-A of the TNVAT Act, 2006, has erroneously clarified that hank yarn under Entry 44 of Part B of the IV Schedule meant only Cotton Hank Yarn and not other types of hank yarns. When this was disputed, the Tamil Nadu Sales Tax

Appellate Tribunal (Additional Bench), Madurai, has observed in its order dated 03.03.2011 in Appeal No.1421/2010 that when it is a hank yarn, irrespective of fibre it is made out of, it is eligible for exemption as provided under TNVAT Act, 2006, as per Entry No.44 o Part B of IV Schedule.

3.5 When the position remained to be the same, the 3rd respondent, issued the impugned notices dated 12.10.2015, demanding to pay heavy amounts of taxes, with an intention to claim VAT on the solely exempted hank yarn. Aggrieved over the same, the petitioner is before this Court.

4.1 According to the learned counsel for the petitioner, the impugned notices dated 12.10.2015 issued by the 3rd respondent solely relying upon the impugned clarification issued by the 2nd respondent, without support and authority of law, is highly arbitary and illegal, as it amounts to doctrine of "false Uno-false Omni bus".

4.2 Adding further, learned counsel for the petitioner has submitted that when the 2nd respondent has clarified vide proceeding dated 14.02.2013, he has attempted to go further beyond the scope of Section 48-A and has interpreted and issued the clarification beyond the provisions of law with prospective application that the hank yarn under Entry 44 of Part B of IV Schedule is mean Cotton Bank Yarn only and not other types of yarns, which is arbitrary and liable to be set aside. That apart, according to him, the notices impugned in these writ petitions pursuant to the issuance of the said clarification are not sustainable and hence, they are liable to be set aside.

5. This Court heard the submissions of the learned Additional Government Pleader made in support of the impugned orders.

6. The orders impugned in these writ petitions dated 12.10.2015 are only show cause notices, for which, necessarily, the petitioner has to file their objections, touching all the grounds relating to the subject matter.

7. After elaborate arguments, the learned counsel for the petitioner submits that the petitioner is willing to file their objections within a time stipulated by this court.

8. Accordingly, the petitioner is permitted to file their objections to the notices dated 12.10.2015 within a period of four weeks from the date of receipt of a copy of this order, meeting out all the requirements and on such filing, by considering each and every objections raised by the petitioner, necessary orders be passed by the assessing authority, on merits and in accordance with law, after affording due opportunity of

personal hearing to the petitioner. Such exercise shall be completed, within a period of six weeks thereafter.

The writ petitions are disposed of with the above directions. No costs. Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1 The Secretary to Government of TamilNadu
Commercial Taxes and Registration Department
Fort St. George chennai - 600 009

2 The Commissioner of Commercial Taxes
The Authority For
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Ezhilagam Chepauk Chennai - 600 005

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Erode

+1 cc to Special government Pleader taxes vide sr.63910
+2 ccs to Mr.R.S.Pandiyaraj, Advocate sr.63502

W.P.Nos.37368 and 37369 of 2015

aa14/12/2015