IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.15596 & 15597 of 2016 &
W.M.P.No.13565 of 2016 in
W.P.No.15596 of 2015

M/s.Carboline(India) Pvt. Ltd.
Rep.by Authorized Signatory
Plot No.356 & 357,Sidco Industrial Estate
Ambattur,
Chennai-600 098. .. Petitioner in both WPs

v.

1 The Assistant Commissioner(CT)
Ambattur Assessment Circle
12, South Higher Court Colony
Villivakkam
Chennai-600 049.

2 The Appellate Deputy Commissioner (CT)
South Greams Road
Chennai-600 003. .. Respondents in both WPs

W.P.No.15596 /2016 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, call for the records of the impugned assessment order in CST 841893/2012-13, dated 22.01.2016 from the files of the first respondent herein and quash the same.

W.P.No.15597/2016 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, call for the records of the impugned assessment order in N.Dis.No.176/2016/A1, dated 12.04.2016 from the files of the first respondent herein and quash the same.

For Petitioner : Ms.Aparna Nandakumar

For Respondent : Mr.Manoharan Sundaram
Addl. Govt. Pleader (Taxes)

COMMON ORDER

The petitioners have filed the above writ petitions to issue a Writs of Certiorari to call for the records of the impugned orders dated 22.01.2016 and 12.04.2016 on the file of the respondents 1 and 2 respectively and to quash the same.

2. It is the case of the petitioner that it is a Private Limited Company and are dealers in Paints and Enamel Colour. For the Central Sales Tax assessment year 2012-13, the petitioner reported a total and taxable turnover of Rs.53,57,35,989/- and Rs.43,06,14,873/- respectively. The petitioner claimed concessional rate of tax at 2% on interstate sales against C-Forms under section 8(1) of the Central Sales Tax Act on a turnover of Rs.43,06,14,873/-. While so, a pre-revision notice dated 18.12.2014 was issued by the first respondent proposing to disallow the claim of concessional levy at 2% and also proposing to disallow the claim of exemption on stock transfer, export sales, sales returns ad cash discounts. The petitioner sent a reply dated 31.12.2014 and also furnished the available C-Forms, Form-F declarations, Form-I declarations in support of their claim of concessional levy, stock transfer and interstate SEZ transactions respectively. By subsequent letter dated 29.01.2015, the petitioner also filed supporting documents towards sales returns and once again prayed for further time of two months for submission of the whole set of statutory forms. By letter dated 09.01.2015, the first respondent confirmed the proposal without granting further time for production of all the statutory forms and confirmed the liability. By order dated 22.01.2016, the first respondent passed rectified order of re-assessment and reduced the liability to Rs.2,33,67,306/- from Rs.4,11,72,327/-. As against the order dated 22.01.2016, the petitioner filed an appeal under section 51 of the Tamil Nadu Value Added Tax Act before the second respondent . While filing appeal, the petitioner also paid pre-deposit of 25% of disputed tax amount of Rs.58,41,827/- as required by second proviso to Section 51(1) of the TNVAT Act. The statutory appeal was filed on 11.04.2016. By the impugned proceedings dated 12.04.2015, the second respondent dismissed the appeal as not maintainable. Challenging the orders dated 22.01.2016 and 12.04.2016, the petitioner has filed the above writ petitions.

3. Admittedly, only a revision is maintainable as against the order dated 22.01.2016 before the Revisional Authority.

4. Ms.Aparna Nandakumar learned counsel appearing for the petitioner submitted that the petitioner would file a revision before the Revisional Authority challenging the impugned order dated 22.01.2016. Since the Act does not contemplate for making pre-deposit for filing a revision, the learned counsel appearing for the petitioner submitted that the respondents may be directed to refund the pre-deposit amount of Rs.58,41,827/-.

5. Mr.Manoharan Sundaram, learned Additional Government Pleader (Taxes), takes notice for the respondents and submitted that instead of refunding the pre-deposit amount, the petitioner may be directed to adjust the said amount in their future liability. Further, the learned Additional Government Pleader submitted that respondents may be directed to maintain status quo till the disposal of the revision to be filed by the petitioner.

6. In view of the submissions made by the learned counsel on either side, I grant liberty to the petitioner to challenge the impugned order dated 22.01.2016 passed by the first respondent, by way of revision before the Revisional Authority, within a period of two weeks from the date of receipt of a copy of this order. The Revisional Authority is directed to dispose of the revision to be filed by the petitioner on merits and and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of four weeks thereafter. The respondents are directed to adjust the pre-deposit amount of Rs.58,41,827/- deposited by the petitioner in the future tax liability of the petitioner i.e. both under CST and TNVAT Acts. The respondents are directed to maintain status quo till the disposal of the revision to be filed by the petitioner. Since the petitioner is challenging the impugned order dated 22.01.2015 by way of revision, no further order is required to be passed in W.P.No.15597/2016.

With these observations, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

1 The Assistant Commissioner(CT)
Ambattur Assessment Circle
12, South Higher Court Colony
Villivakkam
Chennai-600 049.

2 The Appellate Deputy Commissioner (CT)
South Greams Road
Chennai-600 003.

1 cc to Mr.Aparna Nandakumar, Advocate, sr.25909
1 cc to Special Government Pleader, sr.26120

W.P.Nos.15596 & 15597 of 2016 &
W.M.P.No.13565 of 2016 in
W.P.No.15596 of 2015

sks co
kra 09.05.2016