IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.15716 & 15717 of 2014
and
M.P.Nos.1 and 1 of 2014

M/s.Raj Foam,
rep.by its Partner,
No.15, Pycrofts Road (Bharathi Salai),
Royapettah, Chennai-600 014 .. Petitioner in both the W.Ps.

..Vs..

The Assistant Commissioner (CT)(FAC),
Royapettah II Assessment Circle,
Chennai. .. Respondent in both the W.Ps.

Prayer:

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorari calling for the records of the respondent in his proceedings in TIN No.33490780672/2007-08 and 2008-09, respectively, quash the order dated 30.04.2014, passed therein.

For Petitioner : Mr.R.L.Ramani,Sr.counsel
for Mr.B.Raveendran

For Respondents : Mr.S.Kanmani Annamalai, Addl.G.P.,

COMMON ORDER

Heard Mr.R.L.Ramani, learned Senior counsel for Mr.B.Raveendran, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

2.The petitioner is a dealer in Polyurethane Foam (PU Sheets) and registered as a dealer on the file of the respondent under the provisions of Tamilnadu Value Added Tax Act, 2006(TNVAT Act). The orders impugned in these writ petitions are orders of assessment passed for the years 2007-08 and 2008-09.

3. The learned counsel on either side submitted that the issue involved in these writ petitions is covered by the order dated 28.11.2014, passed in W.P.No.29951 of 2013. For better appreciation, the operative portion of the said order is extracted hereunder:

> "4.Today when the matter is taken up, the learned Additional Government Pleader on instruction from the respondents submitted that the clarification dated 23.10.2014 would squarely apply. The clarification sought for before the Advance Ruling Authority was to review the clarification in respect of Poly Urethane Foam. The Authority after considering all the contentions raised

held as follows:-

8. As correctly pointed out by the applicant-dealers, Notification No.II(1)/CTR/12(R-20)/2011 in G.O.Ms.No.78, Commercial Taxes and Registration (B2) Department, dated 11.07.2011, issued under Section 30 of the Act, provides reduction in rate of tax to 5% for several commodities which are normally taxable at 14.5% and one among them in Serial No.13 is related to Plastic goods, the description of which reads as extracted below:

"All plastic goods other than doors, windows, frames profiles, automobile, industrial and sanitary items"

Originally the rate of tax was reduced from 12.5% to 4% with effect from 01.01.2007, under Notification No.II(1)/CTR/3-(a-5)/2007 in G.O.No.79, dated 23.03.2007. Inadvertently, this fact of reduction in rate as per the aforesaid notification was not considered by the Advance Ruling Authority while its earlier clarification dated 25.07.2012 and 03.12.2013.

9. It is pertinent to mention here that the same issue has already been taken up for review on application from Tvl.Kurlon Limited, the party originally affected by the clarification advanced in the Proceedings in ACAAR No.15/2012-13, dated 25.07.2012 and clarified on the lines of the Notification No.II(1)/CTR/12(R-20)/2011 in G.O.Ms.No.78, Commercial Taxes and Registration (B2) Department dated 11.07.2011.

10. The applicant-association is also clarified on similar lines as below:

The Polyurethane Foam is a plastic product, liable to tax at reduced rate of 5%, as per Entry in Sl.No.13 in the list of goods, which are normally taxable at 14.5%

under Part-C of first Schedule, under Notification No.II(1)/CTR/12(R-20)/2011, in G.O.Ms.No.78, Commercial Taxes and Registration (B2) Department dated 11.07.2011, brought into effect from 12.07.2011.

In the event of having clarified as above, the earlier clarifications, vide Proceedings in ACAAR No.15/2012-13, dated 25.07.2012 and ACAAR No.30/2013-14, dated 03.12.2013 need not be rescinded.

5. By virtue of the above clarification, Polyurethane Foam is a plastic product liable to be taxed at reduced of 5%, as per Entry in Sl.No.13 in the list of goods, which are normally taxable at 14.5% under Part-C of Schedule, under Notification in G.O.Ms.No.78, dated 11.07.2011 brought into effect from 12.07.2007.

6. In the light of the above clarification, the impugned assessment order is liable to be set aside. Accordingly, the Writ Petition is allowed and the impugned order is set aside and the matter is remanded to the respondents with a direction to apply clarification given by the authority for Clarification and Advance Ruling in ACAAR No.15/2012-13 & ACAAR No.30/2013-14, dated 23.10.2014, and redo the assessment. No costs. Consequently, connected miscellaneous petition is closed."

4. In the light of the above, these writ petitions are to be allowed. Accordingly, the writ petitions are allowed and the impugned orders are set aside and the matter is remanded to the respondent with a direction to apply clarification given by the authority for Clarification and Advance Ruling in ACAAR No.15/2012-13 & ACAAR No.30/2013-14, dated 23.10.2014, and redo the assessments. No costs. Consequently, connected miscellaneous petitions are closed.

07.10.2016

msk

To

The Assistant Commissioner (CT)(FAC),
Royapettah II Assessment Circle,
Chennai.

T.S.SIVAGNANAM, J

msk

W.P.Nos.15716 & 15717 of 2016

07.10.2016