IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2016

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The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.24913 to 24917 of 2015 (5cases)
and
M.P.Nos.1 of 2015 (5 in nos.)

M/s. IJM Concrete Products Pvt. Ltd.,
rep. by its Assistant General Manager,
18/2, Senneer Kuppam Village,
Avadi Road, Chennai - 600 056. ...Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (CT)
Poonamallee Assessment Circle,
Varadjarapuram - 600 123. ...Respondent in all W.Ps.

Prayer in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the respondent in TIN : 33881663691/2007-08, 2008-09, 2010-11, 2011-12, 2012-13, and to quash the order, dated 15.07.2015 passed therein.

For Petitioner : Mr.R.L.Ramani Senior Counsel for Mr.B.Raveendran

For Respondent : Mr.S.Kanmani Annamalai Additional Government Pleader

COMMON O R D E R

Heard Mr.R.L.Ramani, learned Senior Counsel, assisted by Mr.B.Raveendran, learned counsel for the petitioner, and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent. With the consent on either side, the Writ Petitions are disposed of.

2. The petitioner is engaged in the manufacture of Ready-mix concrete, and have its Factory at Senneer Kuppam Village, Avadi Road, Chennai. The petitioner is a registered dealer, on

the file of the respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956.

3. The short issue, which falls for consideration in these Writ Petitions is as to whether the petitioner is entitled to the benefit of exemption, as the petitioner has supplied Ready-mix concrete to the developers of Special Economic Zone (SEZ).

4. The petitioner had earlier approached this Court, by filing Writ Petitions, in W.P.Nos.9968 to 9973 of 2014. In the said Writ Petitions, the challenge was to the assessment orders, dated 21.02.2014, for the assessment years 2007-08 to 2012-13, on various grounds, in particular, it is in violation of the principles of natural justice. The said Writ Petitions were disposed of, by a common order, dated 07.04.2014, directing the petitioner to effect payment of 15% of the disputed tax, after doing so, the petitioner was granted liberty to treat the assessment orders, dated 21.02.2014, as show cause notices, submit their objection, and thereafter, the Authority was directed to complete the assessment afresh.

5. The petitioner complied with the said direction, and submitted their objection on 28.04.2014. The petitioner stated that they have not claimed exemption as Zero Rated Sales, under Section 18 (ii) of TNVAT Act, as presumed by the Assessing Officer, but, they have claimed exemption, in terms of the notification issued by the Government of Tamil Nadu in G.O.Ms.No.193 of Commercial Taxes Department, dated 30.12.2006, which granted exemption, in respect of sales tax, surcharge, resale tax, and additional sales tax, payable by any dealer, on the sale of any goods, made by such dealer to a registered dealer also, for the purpose of setting up operation, maintenance, manufacture etc., or for use as packing material, or packing accessories, in an unit located in Madras Special Economic Zone, Tambaram, Chennai, and other Special Economic Zones in the State of Tamil Nadu, notified by the Government of India, or for development, operation and maintenance of Special Economic Zone by the developer, and if such registered dealer has been authorized to establish such units.

6. The petitioner, by referring to the aforesaid Government Order, in their objection, submitted that they are effecting sale of Ready-mix concrete to M/s.DLF Info City Developers (Chennai) Ltd., which has been granted approval by the Department of Commerce (EPZ Section) Ministry of Commerce and Industry, Government of India for development and operation of the Sector Specific Special Economic Zone for IT/ITES Sectors, at Chennai. That apart, the petitioner enclosed reconciliation statements and original purchase invoices along with their objection.

7. While completing the assessment, the Assessing Officer, though took note of the objection given by the petitioner, applied the decision of this Court in (TULSYAN NEC Ltd., Vs. Assistant Commissioner (CT) Harbour III, Assessment Circle) reported in (2015) 82 VST 63 (Madras), and stated that the petitioner is not entitled to treat the transaction as Zero Rated Sale. In this regard, Circular No.9 of 2013, dated 24.07.2013, was referred to, by the Assessing Officer, and it was stated that there is no specific provision for Zero Rating the sales of contractors of Developer, or co-developer of SEZ, under the TNVAT Act. Challenging the same, the petitioner is before this Court, by way of this Writ Petition.

8. The common counter affidavit filed by the respondent, is a verbatim repetition of the stand taken by him, in the impugned assessment orders.

9. In my view, the Assessing Officer misdirected himself, by applying the decision in the case of TULSYAN NEC Ltd., when the case of the petitioner itself, is based upon the exemption, which was granted by the Government, in G.O.Ms.No.193, dated 30.12.2006, which was subsequently reiterated by Circular No.25 of 2014, dated 30.05.2014, after VAT regime came into force, stating that, in continuation of Circular No.9 of 2013, dated 24.07.2013, it is further clarified that, works contract, executed for a developer, or co-developer of a SEZ, for its authorized operations, is exempted from levy of sales tax, as per G.O.Ms.No.193 of CT & R (B2) dated 30.12.2006 read with Section 88 (3) (i) of the TNVAT Act, 2006. That apart, in the recent notification, issued by the Government of Tamil Nadu, Commercial Taxes and Registration (B1) Department, dated 29.01.2016, it has been notified as follows:-

> " In exercise of the powers conferred by sub-sections (1) and (2) of section 30 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) and in supersession of the Commercial Taxes and Registration Department Notification No.II (1)/CTR/58 (h-14)/2006, published at pages 8 and 9 of Part II Section 1 of the Tamil Nadu Government Gazette, Extraordinary, dated 30.12.2006, the Governor of Tamil Nadu hereby makes and exemption in respect of the tax payable under the said Act by any dealer on the sale of goods made by such dealer to a registered dealer for the purpose of setting up, operation and maintenance of a unit located in a Special Economic Zone in the

State of Tamil Nadu as notified by the Government of India or for development, operation and maintenance of the Special Economic Zone by the developer of the Special Economic Zone, if such registered dealer is authorized to establish such units or such other establishments within the Special Economic Zone, or to develop, operate and maintain such Special Economic Zone by the Authority specified by the Government of India, subject to the following conditions, namely :

(a) the dealer obtains and furnishes a certificate in the format appended below; and

(b) the goods purchased are used only for the aforesaid purposes. "

10. Though the above notification came into force from 29.01.2016, by reading G.O.Ms.No.193, dated 30.12.2006 and Circular No.25 of 2014, dated 30.05.2014, it is clear that, in respect of these types of transactions, there is exemption provided by the Government.

11. In the light of the above, the impugned orders of assessment calls for interference. Accordingly, the impugned orders are set aside, and the matter is remitted to the respondent for fresh consideration, who shall taken note of the notifications, and redo the assessment in accordance with law, after affording an opportunity of personal hearing to the petitioner.

12. In the result, all the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Assistant Commissioner (CT)
Poonamallee Assessment Circle,
Varadjarapuram - 600 123.

+1 cc to Special Government Pleader(Taxes) vide sr 36187

+1 cc to Mr.B.Raveendran vide sr.36426

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skv(co)
aa11/07/2016