IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2016

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

Writ Petition Nos.19774 to 19778 of 2016 (5 cases)
and
W.M.P.Nos.17079 to 17083 of 2016

Victory Spinning Mills Pvt. Ltd.,
rep. by its Director,
Uppupalayam, Modamangalam,
Tiruchengode - 637 304. ...Petitioner in all W.Ps.

Vs.

1. The Assistant Commissioner (CT)
Tiruchengode,
Rural Circle.

2. The Authority for Clarification and Commercial Ruling
Commercial Tax Department,
Government of Tamil Nadu,
Ezhilagam, Chepauk,
Chennai - 600 005. ...Respondents in all W.Ps.

W.P.No.19774 of 2016 Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records, relating to the notice issued by the first respondent, dated 21.04.2016, in TIN No.33463202827/2011-12, and to quash the same.

W.P.No.19775 of 2016 Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records, relating to the notice issued by the first respondent, dated 21.04.2016, in TIN No.33463202827/2013-14, insofar as, it concerns the rejection of claim of exemption for VSF Hank Yarn and consequent penalty proceedings and to quash the same.

W.P.No.19776 of 2016 Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records, relating to the notice issued by the first respondent, dated 21.04.2016, in TIN No.33463202827/2014-15, insofar as, it concerns the rejection of claim of exemption for VSF Hank Yarn and consequent penalty proceedings and to quash the same.

W.P.No.19777 of 2016 Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records, relating to the notice issued by the first respondent, dated 21.04.2016, in TIN No.33463202827/2012-13, insofar as, it concerns the rejection of claim of exemption for VSF Hank Yarn and consequent penalty proceedings and to quash the same.
and
W.P.No.19778 of 2016 Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records, relating to the proceedings of the second respondent, dated 14.02.2013, in ACAAR22/2012-13, and to quash the same.
In all W.Ps.

For Petitioner : Mr.Niranjan Rajagopalan

For Respondents : Mr.S.Manoharan Sundaram
Additional Government Pleader

COMMON ORDER

Heard Mr.Niranjan Rajagopalan, learned counsel appearing for the petitioner, and Mr.S.Manoharan Sundaram, learned Additional Government Pleader, accepting notice for respondents, and with their consent, the Writ Petitions are taken up for final disposal.

2. The petitioner, who is a registered dealer, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'TNVAT Act') has challenged the notices issued by the Assessing Officer, dated 21.04.2016, pertaining to the assessment years 2011-12 to 2014-15, proposing to reject the claim of exemption on the sales of 100% Viscose Stable Fire (VSF) Hank Yarn, and to assess the petitioner to tax under Section 27 (1) (a) of TNVAT Act for the respective years, and also proposed to levy penalty at 150% of the tax due on the turnover, under Section 27 (3) of the TNVAT Act.

3. The impugned notices were based upon a clarification issued by the Authority for Clarification and Advance Ruling, dated 14.02.2013. Therefore, the petitioner has challenged the said clarification as well.

4. It is submitted by the learned counsel appearing for the petitioner that, in respect of other Spinning Mills, when similar notices were issued by the Assessing Officer, relying upon the very same clarification, the said Spinning Mills, filed a batch of cases before this Court, (viz., W.P.Nos.27077 to

27080 of 2014) challenging the notices issued, proposing to reject the claim for exemption on the sales of 100% VSF Hank Yarn, and those Writ Petitions were disposed of by me, by issuing certain directions, and till such time, the impugned show cause notices were directed to be kept in abeyance. The said decision in the case of (M/s.Sri Munipachaiyappan Textiles Pvt. Ltd., Vs. State of Tamil Nadu, rep. by its Secretary to Govt, Dept. of Commerical Taxes and others) was reported as CDJ 2014 MHC 4524. It is further submitted by the learned counsel that, in those cases, though application has been filed under Section 48-A of TNVAT Act, as per the direction issued by this Court, the same is still pending before the concerned Authority, and till date, the same has not attained finality.

5. The learned Additional Government Pleader, on instructions, submits that, since the instant case is also identical to that of those cases, similar direction may be issued in the instant case also.

6. At this stage, it would be relevant to refer to the operative portion of the order passed in the above referred case, which is extracted hereunder:-

> " 4. In somewhat an identical case Association of Paint Manufacturers approached this Court in W.A.Nos.1660, 1731 and 2135 of 2013 raising similar contention stating that the clarification issued to an individual dealer cannot be uniformly made applicable to all persons/manufacturers, who may manufacture similar or different products. The question which arose for consideration in those case was as to what remedy is available to the person who was not an applicant under Section 48-A of the Tamil Nadu Value Added Tax Act, 2006 and the matter was referred to the Division Bench of this Court in which I was a party. The Division Bench, after considering the claim of the firm held as follows:-
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>> "21. In the light of the reasons assigned above, these Writ Appeals are dismissed, confirming the orders dated 24.06.2013 and 17.07.2013 made in W.P.Nos.12019, 12018 and 18227 of 2013 respectively and the appellants/writ petitioners are at liberty to invoke Section 48-A(4) of TNVAT Act, 2006 by submitting

> applications to the second respondent within a period of two weeks from the date of receipt of a copy of this order and the second respondent shall entertain the same, if the papers are in order and pass orders in accordance with law within a period of six weeks thereafter."

In the light of the above decision, if persons like the petitioners, who are aggrieved by ruling given by the Advance Ruling Authority at the instance of the third party, are not left without remedy and they can invoke Sub-section (4) of Section 48-A of the Act to review, amend or revoke its clarification or advance ruling at any time for good and sufficient cause after giving an opportunity of being heard to the affected parties. Hence, this Court is of the view that such liberty should be granted to the petitioner in the light of the decision of the Division Bench referred above.

5. Accordingly, without setting aside the clarification dated 14.02.2013, liberty is granted to the petitioner to file a review before the second respondent within a period of two weeks from the date of receipt of a copy of this order. On such review application being filed, the second respondent shall consider the same on merits and pass a reasoned order within a period of six weeks thereafter. Till such orders are passed by the second respondent, the show-cause notices dated 28.08.2014 shall be kept in abeyance.

6. The writ petitions are disposed of with the above direction. No costs."

7. In the light of the above discussion, and following the earlier orders passed in the above referred Writ Petitions, this Court, without setting aside the clarification, dated 14.02.2013, grants liberty to the petitioner to file Revision before the second respondent, within a period of four weeks from the date of receipt of a copy of this order. On such Revision being filed, the second respondent shall consider the same, on merits and in accordance with law, after affording an

opportunity of personal hearing to the petitioner, and pass reasoned orders as expeditiously as possible. Till orders are passed by the second respondent, the impugned show causes notices, dated 21.04.2016 shall be kept in abeyance.

8. The Writ Petitions are disposed of accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar(CSVII)

True Copy

Sub-Assistant Registrar

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To
1. The Assistant Commissioner (CT)
Tiruchengode,
Rural Circle.

2. The Authority for Clarification and Commercial Ruling
Commercial Tax Department,
Government of Tamil Nadu,
Ezhilagam, Chepauk,
Chennai - 600 005.

+5 ccs to Mr.G.R.Associates Advocate
sr.nos.31819 to 31823/16
+1 cc to Special Government pleader(Taxes) sr.32023

Writ Petition Nos.19774
to 19778 of 2016
(5 cases)

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