

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2016

CORAM:

THE HON 'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.29052 to 29054 of 2016
& W.M.P.No.25101 to 25103 of 2016

M/s. Chola Spinning Mills (P) Ltd.,
Rep. By its Director, P.Sengodan,
S.F.No.189/1, Kumarapalayam Main Road,
Elanthakuttai Post,
Veppadai, Erode - 638 008 ... Petitioner in all Writ Petitions

-vs-

1. The Assistant Commissioner (CT),
Thiruchengode Rural Assessment Circle,
Thiruchengode
2. The Authority for Clarification and Advance
Ruling, Commercial Taxes Department,
Government of Tamil Nadu ... Respondents in all the WPs

Prayer in W.P.Nos.29052 & 29053 of 2016:- Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, calling for the records on the file of the first respondent, dated 12.07.2016, with respect to the petitioner - company TIN No.33613201241/2007-2008 and 2008-09 for the assessment year 2007-08 and 2008-09, respectively, and quash the same.

Prayer in W.P.No.29054 of 2016:- Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, calling for the records relating to the proceedings of the second respondent dated 14.02.2013 in ACAAR 22/2012-13 and quash the same.

For Petitioner
in all W.Ps. : Mr. Niranjan Rajagopalan
For Respondents
in all W.Ps. : Mrs. Vasudha Thiagarajan, AGP.,

C O M M O N O R D E R

The petitioner, in these writ petitions, are manufacturers of Hank Yard and a registered dealer on the file of the first

respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006. In W.P.No.29054 of 2016, petitioner challenges the clarification issued by the second respondent, who is the authority for Clarification and Advanced Ruling (ACAR).

2. A different dealer, namely Rajaguru Spinning Mills Private Limited filed an application before the second respondent under Section 48-A of the Tamil Nadu Value Added Tax Act, 2006 r/w. Rule 12-A of the TNVAT Rule, 2007 and sought for clarification in column 4 of Form V V regarding 100% Viscose Stable fibre (VSF) Hank Yarn. The said applicant stated that they are manufactures of the said product and requested the applicable VAT rate on 100% VSF hank yarn. Since two contrary clarifications had been issued earlier from the Commissioner of Commercial Taxes with reference to 'hank yarn', the second respondent examined the issue and by proceeding, dated 14.02.2013, clarified that 100% Viscose Staple Fibre (VSF) Hank Yarn sold by the said dealer Rajaguru Spinning Mills Private Limited is taxable at 5% under Entry 3(a) of Part B of the First Schedule to the TNVAT Act, 2006. The second respondent, by applying the said clarification, has assessed the petitioner to tax at the rate of 5% and in this regard, show-cause notices have been issued on 12.07.2014, which are impugned in W.P.Nos.29052 and 29053 of 2016.

3. The petitioner would contend that though Section 48-A grants power to the Government to constitute a State Level Committee for clarification and Advance Ruling, the 'hank yarn' under the said entry meant 'Cotton Hank Yarn' only and not other types of yarns and therefore, Advance Ruling Authority deviated from the original notification adumbrated in the Fourth Schedule under Entry No.44, which is 'Hank Yarn' exempted from tax. Therefore, it is stated that the clarification could not have been applied to the petitioner's case mechanically, since the petitioner did not approach the Advance Ruling Authority seeking for clarification in terms of Sub-section (3) of Section 48-A and the order of the Advance Ruling Authority shall be binding on the applicants who has sought for clarification or advance ruling in respect of the goods in relation to which the clarification or advance ruling was sought and on all the officers working under the control of the Commissioner of Commercial Taxes. Sub-section 4 of Section 48-A gives power to the Advance Ruling Authority to review, amend and revoke its clarifications or advance ruling at any time for good and sufficient cause after giving an opportunity of being heard to the affected parties. Admittedly, the petitioner was not the applicant before the second respondent at whose instance the impugned clarification was issued. The second aspect as to whether the case in relation to which the clarification has been

issued is a question of fact, which may vary from dealer to dealer and this also has to be considered on merits. However, in terms of Clause (iii) of Section 48-A, such clarification will be binding on all the officers working under the control of the Commissioner of Commercial Taxes.

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:-

"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."

5. In the light of the above decision, if persons like the petitioner, 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.

6. 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 12.07.2016 shall be kept in abeyance.

7. The writ petitions are disposed of with the above direction. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Assistant Commissioner (CT),
Thiruchengode Rural Assessment Circle,
Thiruchengode
2. The Authority for Clarification and Advance
Ruling, Commercial Taxes Department,
Government of Tamil Nadu

1 CC to Special Government Pleader, sr.47596
3 ccs to M/s.G.R.Associates, SR.47609, 47607, 47608

W.P.Nos.29052 to 29054 of 2016
& W.M.P.No.25101 to 25103 of 2016

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