IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2016

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THE HON'BLE Mr.JUSTICE M. DURAISWAMY

W.P.Nos.5050 and 5051 of 2016
and WMP Nos.4404 and 4405 of 2016

Clariant Chemicals (India) Ltd.,
represented by its Authorised Person,
SKCL - Deisgn Square
1st Floor, S.11 & S.12,
Thiru Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032
.... Petitioner in both the writ petitions

vs

1. The Assistant Commissioner (CT),
   Pondy Bazaar Assessment Circle,
   Govt Taluk Office Building,
   Green Ways Road,
   Chennai - 600 025

2. The Commissioner of Commercial Taxes,
   Chepauk,
   Chennai - 600 005

3. The Government of Tamil Nadu,
   represented by its Secretary,
   Commercial Taxes Department,
   Fort.St. George,
   Chennai - 600 009

..... Respondents in both the writ petitions

Writ Petitions filed under Article 226 of the Constitution of India praying this Court to issue Writs of Certiorari to call for the records relating to the impugned Orders passed by the first respondent in CST/638530/2011-12 dated 28.12.2015 and CST/638530/2012-13 dated 31.12.2015 and quash the same.

For petitioner : Mr.Lakshmi Kumaran

For respondents : Mr.S.Manoharan Sundaram
Additional Government Pleader (T)

COMMON ORDER

The petitioner has filed the above writ petitions to issue Writs of Certiorari to call for the records relating to the impugned Orders passed by the first respondent in CST/638530/2011-12 dated 28.12.2015 for the Assessment Year 2011-2012 and CST/638530/2012-13 dated 31.12.2015 for the Assesssment Year 2012-2013 and quash the same.

2. It is the case of the petitioner that it is a Public Limited Company, engaged in manufacture of various chemicals, including fungicides and is registered under the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act 1956 (CST Act).

3. The first respondent issued a Notice dated 6.11.2015, wherein it was proposed to levy tax as per Entry 69 of the Part C of the First Schedule to the TNVAT Act 2006. The petitioner's claim of exemption as per the Entry 17A of the Fourth Schedule was rejected by the first respondent, by stating that it is not applicable for industrial preservative, sold under the name "Nipacides".

4. In the reply to the Revised Notice, the petitioner filed its written reply on 30.11.2015, stating that the product " Nipacide", sold by the petitioner, is a fungicide and that the exemption is statutorily available to them.

5. In the notice dated 30.11.2015, the first respondent granted personal hearing to the petitioner and the petitioner also filed their written submissions before the first respondent. Subsequently, by Orders dated 28.12.2015 and 31.12.2015, the first respondent held that the petitioner is liable to pay the tax at the rate of 14.5%.

6. In the counter filed by the respondents, they have stated that the product, manufactured by the petitioner, has no direct application for pest control, but only act as preservative and used as a raw material in the manufacture of paints and thereby not obtained licence under the Insecticides Act 1968. In paragraph-6 of the counter, the respondents have stated that the petitioner is engaged in the manufacture of Chemicals but not fungicides, as claimed by them for the reason that for the manufacture of fungicide, necessary licence is required as per the Insecticides Act 1968.

7. The learned counsel for the petitioner submitted that since the respondents have stated that the petitioner is manufacturing chemicals as per Part - B of The First Schedule, tax of 5% only can be levied. By Notification dated 12.07.2011, the rate of tax in respect of Acids and Chemicals, was increased from 4% to 5%. The learned counsel also submitted that alternatively, under Entry 67 of the First Schedule, the

petitioner is entitled for exemption, however, the product viz., "Fungicides" shall not come within the meaning, as stated by the respondents in their counter. Further, the learned counsel for the petitioner submitted that Fungicides cannot be construed as insecticides, requiring licence under the Insecticides Act. That apart, the learned counsel submited that the respondents had passed the impugned orders, without considering the petitioner's submission that the product viz., "Fungicides" shall not come within the meaning of Insecticide and it does not require registration under Insecticides Act in a proper manner.

8. Mr.S. Manoharan Sundaram, learned Additional Government Pleader, appearing for the respondents, while reiterating the averments, stated in the counter affidavit, filed by the respondents, submitted that the petitioner has not estbalished their case that the Fungicides shall not come within the meaning of Insecticides before the respondents and hence the first respondent had rightly passed the impugned orders. The learned Additional Government pleader also submitted that the product of the petitioner shall come within Entry 69 part "C" of the First Schedule.

9. However, on perusal of the impugned orders, passed by the respondents, I am of the view that in the interest of justice, the petitioner can be given an opportunity to putforth their case by producing necessary documents before the respondents, however, on payment of 75% of the tax calculated at the rate of 5%.

10. Accordingly, the impugned orders dated 28.12.2015 and 31.12.2015 are set aside on condition that the petitioner paying 75% of the tax calculated at the rate of 5%, in each case, within a period of two weeks from the date of receipt of a copy of this order and on payment of the said amount, the first respondent is directed to take up the matter and decide the matter afresh, after considering the documents, to be produced by the petitioner and also after affording due opportunity of hearing to the petitioner, on merits and in accordance wtih law. It is also made clear that the first respondent is directed to pass an order on all the issues, uninfluenced by any of the observations made in the impugned orders dated 28.12.2015 and 31.12.2015. With these observations, both the writ petitions are disposed of. No costs. Consequently, connected Mps are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

sr

To

1. The Assistant Commissioner (CT),
   Pondy Bazaar Assessment Circle,
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3. The Government of Tamil Nadu,
   represented by its Secretary,
   Commercial Taxes Department,
   Fort.St. George,
   Chennai - 600 009

+2 ccs to Mr.Lakshmi Kumaran, Advocate, sr.20832
+1 cc to Special Government Pleader, (Taxes), sr.20815

W.P.Nos.5050 & 5051 of 2016

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kra 13.04.2016