IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM:

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

W.P.Nos.6167 and 6168 of 2017
and
W.M.P.Nos.6635 and 6636 of 2017

M/s.Trident Farm Implements Pvt. Ltd.,
Dealer in Agricultural Implements, Machinery, Parts & Accessories.
Rep.by its Managing Director, Mr.GBN.Saimegnath,
No.12/4-A, Venkatasubbu Reddy Street,
Athipet, Chennai-600 058 ..Petitioner in both W.Ps

Vs.

The Commercial Tax Officer,
Pattravakkam Assessment Circle,
No.127, Yadaval Street, Padi,
Chennai- 600 050. ..Respondent in both W.Ps

Prayer: Writ petitions filed under Article 226 of the Constitution of India praying for a issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in TIN/330981442335/2013-14 and TIN/330981442335/2014-15 respectively, dated 12.01.2017, quash the same and further direct the respondent to grant exemption on the sales of "Rotary Tiller" being agricultural implements exempted under Entry 1/ Part-B of the Fourth Schedule of the Tamilnadu Value Added Tax Act, 2006 without being influenced by the Audit Slip No.54 dated 13.5.2016.

For Petitioners : Mr.V.Sundareswaran

For Respondents : Mr.K.Venkatesh,
Government Advocate

COMMON ORDER

Heard Mr.V.Sundareswaran, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2. With the consent on either side, the writ petitions are taken up for disposal.

3. The petitioner has challenged the assessment orders passed under the provisions of the Tamilnadu Value Added Tax Act,2006 for two assessment years namely 2013-14 and 2014-15. The short issue which falls for consideration is whether the petitioner is entitled for exemption, as their equipment has been described in Part B - Sl.No.1(ii)(17), being classified as Rotavator.

4. An Audit was conducted in the place of business of the petitioner and the petitioner has given their objections on 05.08.2016, stating that the generic name for Rotavator is Rotary Tiller and Rotavator is the brand name of the company called Howard, Germany, which is a commonly used word in the farming circles/farmers is Rotavator and the manufacturer called it Rotavator/Rotary Tiller. Therefore, the petitioner requested to accept the same for the purpose of exemption from Value Added Tax. Inspite of such a stand take before the Audit wing, the Assessing Officer issued a notice dated 28.11.2016 proposing to revise the assessment for the relevant assessment years, reiterating the same stand by mentioning that the petitioner has sold the Rotary Tiller to their customers and claimed exemption for the entire turn over and there is no specific notification issued under the Tamil Nadu Value Added Tax exempting the Rotary Tiller from levy of Value Added Tax.

5. The petitioner submitted their objections on 07.12.2016, once again reiterating that the Rotary Tiller is the generic name of the implement and Rotavator is the brand name of another company. Apart from that, the petitioner also produced the work orders issued by the Agricultural Engineering department, as regards the classification of the

product supplied. The dictionary meaning of Rotavator is shown to be a noun and a trade name.

6. Apart from that, the Chief Engineer of the Agricultural Engineering department has clearly stated that subsidy allowed for Rotary Tiller (Rotavator) is 50% of the basic cost of Rotary Tiller (Rotavator) excluding all other charges. Thus, the competent authority, who is entitled to certify that both the products are one and the same is the Agricultural Engineering department and the respondent Assessing Officer has no expertise on the said issue to take a different decision in the matter, nor interpret the communication sent by the Agricultural Engineering department. What is required to be seen by the Assessing officer is whether the Rotavator is a trade name or a trade mark and whether it is equivalent to a Rotary Tiller. A steel Almirah is colloquially referred to as Godrej, which infact is a trade mark of a premier company producing Steel Almirah. Similarly, Frigidaire is also used to describe a refrigerator. Frigidaire is a trade mark of a leading manufacturer, who were the pioneer in the manufacture of refrigerators. Therefore, for all purposes, Rotary Tiller should be considered as Rotavator, as certified by the competent authority, namely, the Agricultural Engineering department.

Thus, the assessment have to be re-done in the light of the above observations.

7. Thus for the above reasons, the impugned orders are set aside; the writ petitions are allowed and the matter is remanded to the respondent for fresh consideration, who shall extend the benefit of exemption granted for the agricultural implement Rotavator, as this Court is satisfied that Rotavator is a trade mark of a particular company, which manufactures Rotary Tiller. No Costs. Consequently, connected miscellaneous petitions are also closed.

01.08.2017

svki/sli
Index:yes/no
Internet:yes

To

The Commercial Tax Officer,
Pattravakkam Assessment Circle,
No.127, Yadaval Street, Padi,
Chennai- 600 050.

T.S.SIVAGNANAM,J.

sli

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