IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No.4374 of 2013
and
M.P. No.1 of 2013

M/S.RAJ FOAM,
REP. BY ITS PARTNER,
NO.139, BHARATHI SALAI,
ROYAPETTAH, CHENNAI - 600 014. ... PETITIONER

Vs

THE ASSISTANT COMMISSIONER (CT),
ROYAPETTAH - II ASSESSMENT CIRCLE,
CHENNAI. ...RESPONDENT

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records of the Respondent in his proceedings in TIN 33490780672/2012-13, quash the provisional assessment order dated 17.01.2013 made therein.

For Petitioner : Mr. B.Raveendran

For Respondents : Mrs. Narmadha Sampath,
Special Government Pleader.

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O R D E R

Heard Mr.B.Raveendran, learned counsel appearing for the petitioner, and Mrs.Narmadha Sampath, learned Special Government Pleader appearing for the respondent.

2. The petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006, on the file of the respondent, is a dealer in Poly Urethane Foam and its products, which are manufactured in Delhi.

3. In this writ petition, the petitioner has challenged the provisional assessment order dated 17.01.2013 for the assessment year 2012-13 under the provisions of the Tamil Nadu Value Added Tax Act, 2006, wherein the respondent has stated that on verification of the monthly returns filed by the petitioner for the months of April 2012 to November 2012, it was found that the dealers had effected sales of Poly Urethane Foam to a tune of Rs.3,78,30,979/- and since there is no specific entry for Poly Urethane Foam in any of the schedule under the Act, it is an unclassified item, therefore taxable at 14.5% under Section 25 of the Act.

4. The issue involved in this writ petition is squarely covered by a decision in the case of Springfeel Polyurethane Foam Pvt. Ltd. Vs. The Assistant Commissioner (CT) (Addl) in W.P.No.29951 of 2013, dated 28.11.2014 , the relevant portion in the said decision reads as follows:

> 4.Today when the matter is taken up, the learned Additional Government Pleader on instruction from the respondents submitted that the clarification dated 23.10.2014 would squarely apply. The clarification sought for before the Advance Ruling Authority was to review the clarification in respect of Poly Urethane Foam. The Authority after considering all the contentions raised held as follows:-
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> > 8. As correctly pointed out by the applicant-dealers, Notification No.II(1)/CTR/12 (R-20)/2011 in G.O.Ms.No.78, Commercial Taxes and Registration (B2) Department, dated 11.07.2011, issued under Section 30 of the Act, provides reduction in rate of tax to 5% for several commodities which are normally taxable at 14.5% and one among them in Serial No.13 is related to Plastic goods, the description of which reads as extracted below:
> >
> > > "All plastic goods other than doors, windows, frames profiles, automobile, industrial and sanitary items"
> >
> > Originally the rate of tax was reduced from 12.5% to 4% with effect from 01.01.2007, under Notification No.II(1)/CTR/3-(a-5)/2007 in G.O.No.79, dated 23.03.2007. Inadvertently, this fact of reduction in rate as per the aforesaid notification was not considered by the Advance Ruling Authority while its earlier clarification dated 25.07.2012 and 03.12.2013.
> >
> > 9. It is pertinent to mention here that the same issue has already been taken up for review on application from Tvl.Kurlon Limited, the party originally affected by the clarification

advanced in the Proceedings in ACAAR No.15/2012-13, dated 25.07.2012 and clarified on the lines of the Notification No.II(1)/CTR/12(R-20)/2011 in G.O.Ms.No.78, Commercial Taxes and Registration (B2) Department dated 11.07.2011.

10. The applicant-association is also clarified on similar lines as below:

> The Polyurethane Foam is a plastic product, liable to tax at reduced rate of 5%, as per Entry in Sl.No.13 in the list of goods, which are normally taxable at 14.5% under Part-C of first Schedule, under Notification No.II(1)/CTR/12(R-20)/2011, in G.O.Ms.No.78, Commercial Taxes and Registration (B2) Department dated 11.07.2011, brought into effect from 12.07.2011.
>
> In the event of having clarified as above, the earlier clarifications, vide Proceedings in ACAAR No.15/2012-13, dated 25.07.2012 and ACAAR No.30/2013-14, dated 03.12.2013 need not be rescinded.

5. By virtue of the above clarification, Polyurethane Foam is a plastic product liable to be taxed at reduced of 5%, as per Entry in Sl.No.13 in the list of goods, which are normally taxable at 14.5% under Part-C of Schedule, under Notification in G.O.Ms.No.78, dated 11.07.2011 brought into effect from 12.07.2007.

6. In the light of the above clarification, the impugned assessment order is liable to be set aside. Accordingly, the Writ Petition is allowed and the impugned order is set aside and the matter is remanded to the respondents with a direction to apply clarification given by the authority for Clarification and Advance Ruling in ACAAR No.15/2012-13 & ACAAR No.30/2013-14, dated 23.10.2014, and redo the assessment. No costs. Consequently, connected miscellaneous petition is closed.

5. Following the above decision, the writ petition is allowed and the impugned provisional assessment order is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/- (CS-IV)
Assistant Registrar

True Copy

Sub Assistant Registrar

To

THE ASSISTANT COMMISSIONER (CT),
ROYAPETTAH - II ASSESSMENT CIRCLE,
CHENNAI.

+1 C.C. To Mr. B.RAVEENDRAN, Advocate SR.NO.68012.

+1 C.C. to Spl.Govt.Pleader (Tax) SR.NO.68025

W.P. No.4374 of 2013

ADD 09.10.2017