IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM :

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P. No.9719 of 2006
and W.M.P.No.10846 of 2006

M/s.Indian Toners & Developers Ltd.,
Rep. By its Sr.Depot Incharge-C.B.Sridharan. .. Petitioner

-vs-

1.The Commissioner of Commercial Taxes,
Chepauk, Chennai 600 005.

2.The Commercial Tax Officer,
Harbour III Assessment Circle,
Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of the first respondent in his proceedings in Ref.No.Acts Cell-II/8614/2005 dated 13.03.2006 and quash the same as illegal in so far as this petitioner is concerned.

For Petitioner : Mrs.R.Hemalatha

For Respondents : Mr.S.Kanmani Annamalai
Addl.G.P.

O R D E R

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.Kanmani Annamalai, learned Additional Government Pleader for the respondents.

2.The petitioner is aggrieved by a clarification issued by the first respondent dated 13.03.2006 with regard to the rate of tax payable for Toners and Developers for photocopying machines. The first clarification issued was on 24.12.1999 fixing the rate of tax at 4%. Subsequently, by clarification dated 13.05.2000, it was increased to 8%, which was maintained at 8% by another clarification dated 19.08.2002. By virtue of the impugned clarification, the rate of tax has been fixed at 11% upto 30.11.2001 and 12% for the period from 01.12.2001 to 26.03.2002 and 12% from 27.03.2002 onwards.

3.The question is not whether the clarification given by the authority is proper and valid, but whether it could be made applicable retrospectively. This issue is no longer res integra and has been decided by the Hon'ble Division Bench of this Court in P.A.S.Industries vs. Commissioner, CT (Mad.), (2007) 6 VST 671 (Mad), wherein this Court, while examining a clarification issued under the Tamil Nadu General Sales Tax Act, 1959, held that the said clarification can be given only prospective application. Assuming the Assessing Officer applies the clarification with retrospective effect, it will amount to reopening the completed assessments and in some cases, it may also impinge upon the limitation fixed for reopening an assessment. That apart, it will cause great prejudice to the assessee.

4.Therefore, without setting aside the impugned clarification and taking note of the stand taken by the Assessing Officer in the counter-affidavit, there will be a direction to the second respondent to apply the impugned clarification to the petitioner's case only prospectively and not to reopen the already completed assessments based on the clarification, which has been given retrospective effect from November, 2001.

5.With the above direction, the writ petition is disposed of. No costs. Consequently, WP.M.P.No.10846 of 2006 is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Commissioner of Commercial Taxes,
   Chepauk, Chennai 600 005.

2. The Commercial Tax Officer,
   Harbour III Assessment Circle,
   Chennai.

+ 1 cc to M/s.R.Hemalatha, Advocate,SR.56515
+ 1 cc to The Govt.Pleader, SR.56201

W.P.No.9719 of 2006

RJ(CO)
NR 28/08/2017