IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19493 of 2017 and
WMP No.21041 of 2017

Manager
RGE Digital Imaging Solutions (P) Ltd.,
No.15, Medavakkam Road,
Sholinganallur, Chennai - 600 119.
...Petitioner

Vs

1.The Assistant Commissioner (CT)
Kelambakkam Assessment Circle,
Plot No.141, Burma Colony,
3rd Floor, First Main Road, Perungudi,
Chennai - 600 096.

2.Authority for Clarification and Advance Ruling
Viz., the Commissioner of Commercial Taxes
O/o The Commissioner of Commercial Taxes Dept.,
Ezhilgam, Chennai -5. ...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus, to call for the records of the Assistant Commissioner (CT), Kelambakkam Assessment Circle, Perungudi, Chennai -96 viz., the first respondent in his proceedings in CST/1135139/2015-16 dated 14.06.2017 and quash the same and consequentially direct the first respondent to levy tax on the turnover of the petitioner company at the rate of 5% only.

For Petitioner : Mr.P.M.Subramaniam
For Respondents: Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.P.M.Subramaniam, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of the respondents.

2. With the consent on either side, the writ petition itself is taken up for disposal.

3. The petitioner is a registered dealer on the file of the first respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as "TNVAT Act") and Central Sales Tax Act, 1956 (hereinafter, referred to as "CST Act") and they are engaged in manufacturing printing machinery. For the assessment year 2015-2016, the petitioner was deemed to have been assessed. Subsequently, a notice was issued by the first respondent dated 19.05.2017 stating that their sales turn over is taxable at 14.5% instead of 5% and therefore, the first respondent proposed to revise the assessment.

4. Though in the pre-revision notice dated 19.05.2017, the first respondent did not refer to any Circular issued by the second respondent, namely, the authority for Clarification and Advance Ruling , the petitioner came to know that a review has been filed before the said authority to review the Clarification dated 22.07.2014. Therefore, the petitioner, in his reply dated 24.05.2017 stated that till the review is decided by the second respondent, the petitioner's assessment need not be revised. The petitioner also referred to an order passed by this Court in W.P.No.27345 of 2014 dated 15.10.2014 [M/s.Haripriya Printers and Traders Pvt. Limited Vs. The Authority for Clarification and Advance Ruling under Section 48-A of TNVAT Act, 2006, Rep. by its Members]. Though such objection was given by the petitioner, the first respondent did not consider the same, but merely stated that as per Clarification dated 22.07.2014, the transaction is liable to be taxed at the rate of 14.5%. The manner in which the first respondent has completed the assessment is incorrect, since the first respondent ought to have considered the objection raised by the petitioner in its entirety and assign reason as to why revision of assessment should not await the decision of the Advance Ruling Authority.

5. Considering the fact that already one of the dealers, who is similarly placed to that of the petitioner has filed a review petition, pursuant to the direction issued by this Court and the matter is now pending consideration before the authority, similar direction should be issued in the instant case, so as to protect the interest of the dealer as well as to ensure that correct rate of tax is collected from the dealer and the interest of the Revenue would also safe-guarded.

6. Accordingly, the writ petition is disposed of, by directing the petitioner to file a review petition under Section 48-A (4) of the TNVAT Act to review Clarification dated 22.07.2014, within a period of two weeks from the date of receipt of a copy of this order and on such petition being filed, the second respondent is directed to take the same along with the said review petition filed by M/s. Haripriya Printers and Traders Pvt. Limited and other dealers and take a final

decision in the matter as expeditiously as possible. Till the matter is decided by the second respondent, the first respondent is directed to assess the petitioner at the rate of 5% on plant and machinery. However, revision of assessment shall be subject to the order to be passed by the second respondent on the review petitions and in the event, the petitioner is liable to pay higher rate of interest on such order passed by the second respondent, the petitioner shall not raise the question of limitation at that point of time.

7. The writ petition is disposed of with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Assistant Commissioner (CT)
Kelambakkam Assessment Circle,
Plot No.141, Burma Colony,
3rd Floor, First Main Road, Perungudi,
Chennai - 600 096.

2.Authority for Clarification and Advance Ruling
Viz., the Commissioner of Commercial Taxes
O/o The Commissioner of Commercial Taxes Dept.,
Ezhilgam, Chennai -5.

+1 CC to Ms. P.M. Subramanian, Advocate sr 54614.

W.P.No.19493 of 2017

RSK(CO)
sp(10/08/2017)