IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.10.2017

CORAM

THE HON'BLE MR.JUSTICE T.SIVAGANAM

W.P.No.36688 of 2007
and
M.P.No.1 of 2007

Maxtherm Technologies Private Limited
represented by its Director
Mr.V.S.Mani
No.32/12, T.S.Krishna Nagar
2nd Floor, Commercial Complex
Anna Nagar (West) Extention
Chennai 600 050. ...Petitioner

Vs.

The Deputy Commercial Tax Officer
Ambattur Assessment Circle
No.5, High Court Colony
Chennai 600 049. ... Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondent from demanding tax for the year 2004-05 as per the assessment order dated 08.12.2006 vide CST/767618/04-05 in respect of the products manufactured by the petitioner which are exempted as per the notification issued by the Government and direct the respondent to dispose of the application filed to rectify/revise the assessment order dated 08.12.2006 for the year 2004-05 on the file of the respondent.

For Petitioner : Mr.Shivakumar

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.Shivakumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing on behalf of the respondent and perused the materials placed on record including the parawise instructions given to the learned Additional Government Pleader by the respondent vide letter dated 27.12.2007.

2.The petitioner has filed the writ petition to forbear the respondent from demanding tax for the assessment year 2004-05 as per the assessment order dated 08.12.2006, without considering the petitioner's application for the rectification of the assessment, in the light of an exemption notification issued by the Government and seeks for a direction to the respondent to dispose of the said application.

3. The assessment was completed by the respondent under the provisions of the Central Sales Tax Act, 1956 (" CST Act" in short) for the assessment year 2004-05. The petitioner noticed that the Assessing Officer did not grant them exemption in respect of the Renewable Energy Equipments and Devices.

4. The Government of Tamil Nadu, in exercise of its powers conferred under sub-section 5 of Section 8 of the CST Act, exempted payment of tax by any dealer under the said Act, in respect of sale of Renewable Energy Equipments and Devices and systems designed to use solar, biogas and wind energy, appended to the notification in the course of inter-state trade or commerce.

5. By another notification dated 17.03.1993 exemption was extended to Renewable Energy Equipments and saving Devices. The petitioner, enclosing the copy of the relevant exemption notifications stated above, submitted an application stating they are entitled for grant of exemption and requested the Assessing Officer to revise the order. This application was received by the respondent on 10.10.2017 as could be seen from the endorsement in the letter delivery book [Peon book]. Since the application was not considered, the petitioner is before this Court.

6. However, for the next assessment year i.e., 2005-06, the claim for exemption of sale of renewable energy equipments and devices has been exempted by the Assessing Officer and found to be correct in accordance with the exemption notification dated 17.03.1993.

7. In the parawise comments, it is stated that he cannot exercise his power under Section 55 of the Act to revise the assessment, since the assessment itself was a revision of assessment made under Section 16 of the TNGST Act. This conclusion wholly is not tenable for the simple reason that even the revised assessment is an assessment by itself.

8. Therefore the Assessing Officer is well within the jurisdiction to invoke his power under Section 55 to rectify an error occurred while completing the assessment or the revised assessment. Therefore, the respondent should consider the petitioner's application for revision and pass appropriate orders.

9. In the light of the above, the writ petition is disposed of by directing the respondent to consider the petitioner's application dated 10.10.2007 filed under Section 55 of the TNGST Act, afford an opportunity of personal hearing, verify the claim for exemption and if the same is found proper, the respondent shall grant the exemption in terms of the notification issued by the Government of Tamil Nadu dated 17.03.1993.

10. The above direction shall be complied with within a period of 12 weeks from the date of receipt of a copy of this order. Till then the order of interim injunction granted by this Court, while entertaining this writ petition, shall continue. No costs. Consequently, connected WMP.No.1 of 2007 is disposed of.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Deputy Commercial Tax Officer
Ambattur Assessment Circle
No.5, High Court Colony
Chennai 600 049.

+1cc to M/s.Shivakumar Suresh, Advocate SR.No.74511

+1cc to the Special Government Pleader (Taxes) SR.No.74454

W.P.No.36688 of 2007

SDR 23.11.2017