IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

CORAM:

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

W.P.No.27973 of 2006
and
W.P.M.P.No.1 of 2006

P.R.P.Granites,
Near Veera Kaliamman Koil,
Keelavalavu, Melur(TK),
Madurai - 625 602.
Rep. by its Managing Partner,
Mr.P.Palanichamy ... Petitioner

Versus

1. The Union of India,
   Rep. by its Secretary,
   Board of Approval (EOUs)
   Ministry of Commerce & Industry,
   Department of Commerce,
   Government of India, Shastri Bhavan, R.P.Marg,
   New Delhi - 110 002.

2. The Director General of Foreign Trade
   And Ex-Officio Secretary to Government of India,
   Ministry of Commerce & Industry,
   Department of Commerce,
   Government of India, Shastri Bhavan,
   R.P.Marg, New Delhi - 110 002.

3. The Development Commissioner,
   Madras Export Processing Zone,
   National Highways,
   45, Tambaram, Madras - 600 045.

4. The Joint Development Commissioner,
   Madras Export Processing Zone,
   National Highways,
   45, Tambaram, Madras - 600 045.

5. The Central Board of Direct Taxes,
   Central Secretariat,
   North Block, New Delhi,
   Rep. by its Secretary.

6. The Assistant Commissioner of Income Tax,
Circle II, C.R.Buildings,
V.P.Ramasamy Nadar Street,
Madurai - 625 002. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of declaration declaring that the recognition of the petitioner as an undertaking engaged in a manufacturing activity by the first, second and third respondents shall be binding on the fifth and sixth respondents in the matter of the application of Section 10B of the Income Tax Act, to the petitioner.

For Petitioner : Mr.Dayaleeswaran

For Respondents : Mr.A.P.Srinivas,
Senior Panel Counsel

O R D E R

Heard Mr. Dayaleeswaran, the learned counsel appearing for the petitioner and Mr.A.P.Srinivas, the learned Senior Panel Counsel appearing on behalf of the respondents.

2. The petitioner in this writ petition has prayed for writ of declaration to declare that the petitioner is engaged in manufacturing activity and that the recognition of the respondents 1 to 3 shall bind the respondents 5 and 6/ Income Tax Department, in the matter of application of Section 10B of the Income Tax Act.

3. Though the counter affidavit has been filed by the respondents, it is pointed out by the learned Standing counsel appearing for the Revenue that the the matter need not be adjudicated in the light of certain subsequent developments. It is pointed out that the same issue was considered by the petitioner's Assessing Officer viz., the sixth respondent for the assessment year 2003-2004 and vide order dated 26.12.2008, it was concluded that the petitioner satisfies the essential requirements as stipulated under Section 10B (2)(iii) of the Income Tax Act, 1961.

The operative portion of the order reads as follows:

> "Thus:
> (i) The sequence of various activities undertaken by the assessee as narrated above clearly establish that they manufacture or produce processed and dressed dimensional granite blocks in assorted dimensions.

(ii) The activities undertaken by the assessee squarely falls under the term "manufactures or produces" and thereby they satisfy Section 10B (2)(i) of the Income Tax Act, 1961 and

(iii) It is satisfied that the assessee has not formed the unit by splitting up, or the reconstruction, of a business already in existence.

(iv) The assessee satisfied the essential legal requirements as stipulated under Section 10B(2)(iii) with regard to formation of EOU with previously used plant and machinery to the tune of 12.88% which is less than 20% as statutorily prescribed under the Income Tax Act, 1961.

In view of the foregoing reasons, I am thoroughly convinced and the assessee's claim of exemption under Section 10B of the Income Tax Act, 1961 is finally allowed and the assessment is completed and accordingly."

Further, it is pointed out that for the assessment year 2007-2008, which was a scrutiny assessment under Section 143 of the Act, the above position with regard to the petitioner satisfying the essential legal requirements as stipulated under Section 10B(2)(iii) of the Act has been reiterated in the assessment order dated 02.12.2009.

4. In the light of the subsequent developments, the issue, having been already settled in favour of the petitioner, no further orders are required in the writ petition, except to record a stand taken by the department in favour of the petitioner in the above referred assessment order.

5. Accordingly, this writ petition stands disposed of with the above observations. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mrr/rkm

To

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   Board of Approval (EOUs)
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+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.66685

W.P.No.27973 of 2006

AK(CO)
CA(04/10/2017)