BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2017

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU
W.P.(MD)No.4156 of 2011
and
W.M.P.(MD)No.1 of 2011

Tvl. Udhayam Chemicals,
Rep. by its Proprietrix : U.Parameshwari,
RS No.45/5B, Kazhuvankulam,
Pottapalayam Panchayat,
Manamadurai Taluk,
Sivagangai District. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Sivagangai. ...Respondent

Prayer: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari, calling for the records on the file of the respondent in CST No.499460/2007-08 dated 25.02.2011 and quash the same as illegal, against the Principles of Natural Justice and totally against the Exemption Notification No.II(1)/CTRE/261/82 issued with G.O.P. No.996 dated 25th August, 1982, under section 8(5) of the Central Sales Tax Act, 1956.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.Raja Karthikeyan
Additional Government Pleader

ORDER

The petitioner, who is doing business in manufacturing and selling of Metal Polishing Soap in the name and style of "Udhayam Chemicals", Madurai is challenging the proceedings of the respondent dated 25.02.2011 in CST No.499460/2007-08, whereby the respondent rejected the contentions of the petitioner that the notification issued in G.O.P.No.996 dated 25.08.82 – No.II(1)/CTRE/261/82, granted exemption on the sales effected by the petitioner, having the Unit certified by the Khadhi and Village Industries Commission, on the ground that it is not applicable to the petitioner to claim exemption from levy of Central Sales Tax.

2.Heard Mr.A.Chandrasekaran, the learned counsel appearing for the petitioner and Mr.Raja Karthikeyan, the learned Additional Government Pleader appearing for the respondent.

3.The petitioner, who is doing business in manufacturing of Metal Polishing Soap in the name and style of "Udhayam Chemicals" has been issued a certificate of registration dated 29.05.2001 by the Khadi and Village Industries Commission certifying that the Unit run by the petitioner has been financed under the Khadi and Village Industries Commission Margin Money Scheme for the manufacturing Metal Polishing Store which is a product of Village Industries as defined in the Khadi and Village Industries Act, 1956 as amended under Act 1987. In the notification bearing G.O.P.No.996 dated 25.08.82 - No.II(1)/CTRE/261/82 issued by the Governor of Tamil Nadu in exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956, it has been directed that no tax under the said Act shall be payable in respect of the sales of all products of village industries, subject to certain conditions. On that basis, the petitioner claimed that she was not liable for the levy of Central Sales Tax. However, the respondent rejected the said claim on the ground that the petitioner is not an "institution" for whom alone exemption from tax payable under Tamil Nadu General Sales Tax Act, 1959 has been provided in the notification in G.O.Ms.No.122 dated 20.03.1992 issued by the Government of Tamil Nadu, which according to the Respondent has amended the earlier notification mentioned supra. The said order of rejection passed by the respondent by proceedings dated 25.02.2011 in CST No.499460/2007-08 is assailed in this Writ Petition.

4.It is submitted by the learned counsel for the petitioner that the notification bearing G.O.Ms.No.122 dated 20.03.1992, relied by the respondent was not issued in the exercise of the powers under the Central Sales Tax Act and as such, it cannot be said that the same has amended the earlier notification G.O.P.No.996 dated 25.08.82 - No.II(1)/CTRE/261/82 issued under the Central Sales Tax Act.

5.It is not in dispute that the exemption from tax claimed by the petitioner was only in respect of the liability under Central Sales Tax Act and not with reference to the Tamil Nadu General Sales Tax Act. It requires to be pointed out that the notification G.O.P.No.996 dated 25.08.82 - No.II(1)/CTRE/261/82 reads as follows:

> "Notification G.O.P.No.996 dated the 25th August, 1982.
>
> No.II(1)/CTRE/261/82. - In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956, (Central Act 74 of 1956), and in supersession of the Revenue Department Notification III No.113 of 1967 dated the 11th February, 1967, published at page 276 of Part III of the Fort St. George Gazette dated the 1st March, 1967, the Governor of Tamil Nadu hereby directs that no tax under the said Act shall be payable in

respect of the sales of all products of village industries specified in the Schedule to the Khadi and Village Industries Commission Act, 1956 (Central Act 61 of 1956), excluding hand-made matches effected by the institutions and persons certified for the purpose, by the Khadi and Village Industries Commission or the Tamil Nadu State Khadi and Village Industries Board, subject to the conditions that they shall deal only in products of village industries specified in the Schedule to the said Central Act 61 of 1956."

A perusal of that notification would clearly indicate that the exemption of tax under the Central Sales Tax Act has been provided to sale of products of village industries by any 'person' or 'institution' on satisfaction of the conditions mentioned therein. Notification G.O.Ms.No.122 dated 20.03.1992 No.II(1)/ CTRE/55(a-2)/92 is only in respect of Tax payable under Tamil Nadu General Sales Tax Act, 1959 effected by the institutions certified for the purpose of sales of product of Village Industries specified in scheduled to the Khadi and Village Industries Commission, 1956 for the purpose by the Khadi and Village Industries Commission, Bombay, and its Regional Office at Madras.

7.In as much as the petitioner has claimed exemption only in respect of Tax payable under Central Sales Tax Act and not in respect of Tamil Nadu General Sales Tax Act, 1959, the respondent was clearly in error in relying the Notification G.O.Ms.No.122 dated 20.03.1992 No.II(1)/CTRE/55(a-2)/92 issued under the Tamil Nadu General Sales Tax Act. In these circumstances, the interpretation made by the respondent that the petitioner is not an 'institution' for the purpose of exemption for Central Sales Tax is apparently untenable and the impugned order cannot be sustained. Hence, the Writ Petition is allowed, the impugned order bearing CST No.499460/2007-08 dated 25.02.2011 passed by the respondent is set aside and the respondent is directed to pass appropriate orders on the representation of the petitioner for exemption from Central Sales Tax for the relevant financial year in accordance with law and communicate the decision to the petitioner and file a report of such compliance before the Registrar (Judicial) of this Court on or before 31.01.2018. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Sivagangai.

Copy to

The Registrar(Judicial)
Madurai Bench of Madras High Court,
Madurai.

+1cc to Spl.Government Pleader Sr.No.89611
+1cc to Mr.A.Chandrasekaran, Advocate Sr.No.89389

SJ

VB/KK/SAR3/28/12/2017/4P/5C

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