IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8013 of 2012
and M.P.No.1 of 2012

M/s.Uniply Industries Ltd.
Rep. by its Director: B.L.Bengani
No.52, Harieys Road
Kilpauk, Chennai - 600 010. ... Petitioner

Vs.

The Assistant Commissioner (CT)
Ayanavaram Assessment Circle
Kuralagam Annexe, 3rd Floor
Chennai - 600 108. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records relating to the impugned order passed by the respondent in TIN:33341002351/2007-08 dated 29.02.2012 and quash the same as illegal, unsustainable and contrary to Section 18 of the Tamil Nadu Value Added Tax Act.

For Petitioner : Mr.M.A.Mudimannan

For Respondent : Ms.G.Dhanamadhri
Government Advocate (T)

ORDER

Heard Mr.M.A.Mudimannan, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondent.

2.The petitioner has filed this writ petition challenging an Assessment Order under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the Assessment year 2007-08. The legal issue, which arises for consideration in this writ petition, has been answered by this court in case of *M/s.IJM Concrete Products Pvt. Ltd., Vs. The Assistant Commissioner* in *W.P.No.24913 and 24917 of 2015* dated 28.06.2016. The question, which fall for consideration in the batch of cases, was whether the petitioner therein is entitled to the benefit of exemption as the petitioner has supplied Ready-mix concrete to the developers of Special Economic Zone (SEZ). This Court by the above said order, allowed the writ petition and set aside the impugned assessment orders and remanded the matter to the Assessing Officer for fresh consideration, who was directed to take note of the notifications and redo the assessment in accordance with law, after affording an opportunity of personal hearing to the petitioner. The operative portion of the order reads as follows:

> *"9. In my view, the Assessing Officer misdirected himself, by applying the decision in the case of TULSYAN NEC Ltd., when the case of the petitioner itself, is based upon the exemption, which was granted by the Government, in G.O.Ms.No.193, dated 30.12.2006, which was subsequently reiterated by Circular No.25 of 2014, dated 30.05.2014, after VAT regime came into force, stating that, in continuation of Circular No.9 of 2013, dated 24.07.2013, it is further clarified that, works contract, executed for a developer, or co-developer of a SEZ, for its authorized operations, is exempted from levy of sales tax, as per G.O.Ms.No.193 of CT & R (B2) dated 30.12.2006 read with Section 88 (3) (i) of the TNVAT Act, 2006. That apart, in the recent notification, issued by the Government of Tamil Nadu, Commercial Taxes and Registration (B1) Department, dated 29.01.2016, it has been notified as follows:-*
>
> *" In exercise of the powers conferred by sub-sections (1) and (2) of section 30 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) and in supersession of the Commercial Taxes and Registration Department Notification No.II (1)/CTR/58 (h-14)/2006, published at pages 8 and 9 of Part II Section 1 of the Tamil Nadu Government Gazette, Extraordinary, dated 30.12.2006, the Governor of Tamil Nadu hereby makes and exemption in respect of the tax payable under the said Act by any dealer on the sale of goods made by such dealer to a registered dealer for the purpose of setting up, operation and maintenance of a unit located in a Special Economic Zone in the State of Tamil Nadu as notified by the Government of India or for development, operation and maintenance of the Special Economic Zone by the developer of the Special Economic Zone, if such registered dealer is authorized to establish such units or such other establishments within the Special Economic Zone, or to develop, operate and maintain such Special Economic Zone by the Authority specified*

by the Government of India, subject to the following conditions, namely :

(a) the dealer obtains and furnishes a certificate in the format appended below;
and
(b) the goods purchased are used only for the aforesaid purposes. "

10. Though the above notification came into force from 29.01.2016, by reading G.O.Ms.No.193, dated 30.12.2006 and Circular No.25 of 2014, dated 30.05.2014, it is clear that, in respect of these types of transactions, there is exemption provided by the Government.

11. In the light of the above, the impugned orders of assessment calls for interference. Accordingly, the impugned orders are set aside, and the matter is remitted to the respondent for fresh consideration, who shall taken note of the notifications, and redo the assessment in accordance with law, after affording an opportunity of personal hearing to the petitioner.

12. In the result, all the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed. "

3. The learned counsel for the petitioner submits that issue raised in the above writ petitions is squarely covered the by the above decision. The learned standing counsel appearing for the Revenue does not dispute the stand taken by the petitioner.

In the light of the above, this writ petition is allowed and the impugned order is set aside and the matter is remitted to the respondent for fresh consideration, who shall taken note of the notifications, and redo the assessment in accordance with law, after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Ayanavaram Assessment Circle
Kuralagam Annexe, 3rd Floor
Chennai - 600 108.

+1cc to M/s.K.Jayachandran, Advocate SR.NO..No.48560

GP(CO)
sm:10.8.2018

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