IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.01.2018

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.1174 to 1177 of 2018
and
W.M.P.Nos.1464 to 1470 of 2018

M/s.All India Marathon Sports,
Rep. by its Proprietor,
No.35/A, Ezhaimariamman Koil Street,
Muthialpet,
Puducherry. .. Petitioner in all WPs

Vs.

1.The Appellate Assistant Commissioner [CT],
Commercial Taxes Department,
100 Feet Road,
Pudupalayam,
Puducherry.

2.The Assistant Commercial Tax Officer-I,
Government of Puducherry,
Commercial Taxes Department,
Puducherry.

3.The Branch Head,
Indusind Bank Limited,
Pondicherry Branch,
55, Chetti Street,
Puducherry. ... Respondents in all Wps

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent in the impugned Common Order in Appeal No. 8/PVAT/2017-18/AAC, Appeal No.9/CST/2017-18/AAC, Appeal No.10/PVAT/ 2017-18/AAC and Appeal No.11/CST/2017-18/AAC respectively, dated 10.11.2017 and quash the same as issue contrary to the decision of this Hon'ble Court passed in petitioners own case in W.P.No.8059 to 8061 of 2017 and against the principles of natural justice since order is passed on a pre-determined basis without considering the appeal grounds completely and for a direction to the second respondent to lift the bank attachment.

For Petitioner : Ms.Radhika Chandrasekhar
in all WPs

For Respondents : Mr.J.Kumaran, Govt. Advocate
1 & 2 in all WPs

COMMON ORDER

Heard Ms.Radhika Chandrasekhar, learned counsel for the petitioner and Mr.J.Kumaran, learned Government Advocate [Puducherry] accepts notice on behalf of respondents 1 and 2. Notice to R3 is dispensed with.

2.The Writ Petitions are taken up for disposal with the consent on either side.

3.The petitioner is aggrieved by the common order passed by the first respondent-the Appellate Assistant Commissioner [CT], exercising power under the provisions of Puducherry Value Added Tax Act, 2007 [in short "PVAT Act"] and the Central Sales Tax Act, 1956 [in short "CST Act"]. The appeals have been filed by the petitioner against the Assessment Orders passed for the years 2011-12 and 2012-13 both under the PVAT Act and the CST Act. Therefore, these four appeals were filed before the first respondent.

4.The petitioner appears to have raised various contentions in the memorandum of grounds of appeal, as regards the rate of tax levied by the Assessing Officer on the sale of sports goods and Treadmill. Though the order passed by the Appellate Authority appears to be an elaborate order, the finding is only in paragraph Nos.14 and 15 of the impugned order, wherein, the Appellate Assistant Commissioner has stated that the Authority for Clarification and Advance Ruling has held that the commodity Treadmill is taxable at 12.5% up to 31.12.2011 and thereafter at 14.5% under the CST Act and therefore, he is bound by the said order and accordingly, confirmed the order of Revised Assessment dated 10.08.2017.

5.The legal issue as regards the effect and clarification given by the Advance Ruling Authority was considered by this Court in assessee's own case in W.P.Nos.8059 to 8061 of 2017, by order dated 27.07.2017, in which, the petitioner challenged the pre-assessment notices for the assessment years 2009-10 and 2010-11 as being barred by limitation as prescribed under the PVAT Act. In the said Writ Petitions, the Court considered the effect of clarification issued by the Advance Ruling Authority in the following terms :

"... 8.Before we examine the effect of the above provisions, it would be necessary to take note of the legal principle as to what would be effect of a Clarification and Advance Ruling issued by the concerned authorities. On this aspect, I am guided by the decision of the Hon'ble Division Bench in the case of Amul Ploycure Industries Ltd., Vs. Tamil Nadu Taxation Special Tribunal and others reported in 2004 Vol. 134 STC 526, wherein, the Division Bench, while dismissing a writ petition filed by the dealer challenging a Clarification held that Clarification can be assailed in the appeal as well as before the assessing officer on the basis of proper evidence, if the assessee so feels. No compulsion and binding nature on the assessing authority is found in the provisions of Section 28A(3) of the Tamil Nadu General Sales Tax Act, 1959. The Assessing Authority would certainly be bound only by the appellate order. It is not necessary for the Court to go into the question of correctness of the clarification issued and that would depend on the evidence which would be lead by the assessee before the concerned authorities.

9.The Tamil Nadu Taxation Special Tribunal in Salt Sales Corporation and another Vs. Deputy Commercial Tax Officer (Additional) and others [2004 Vol.134 STC 529), while upholding the vires of Section 28A of the Tamil Nadu General Sales Tax Act, held that any clarification given by the Commissioner under sub-section (1) of Section 28-A, i.e., as to the correct rate of tax on particular goods, will bind the parties who sought the clarification. If it is a society or association it will bind all its members. However, it will be open to them to canvass such clarification in assessment proceedings before the assessing officer and appellate proceedings before the Appellate Assistant Commissioner. The ultimate independent decision should be that of the assessing or the Appellate Assistant Commissioner. It was further held that any clarification given under sub-section (2) of section 28-A of the Act, i.e., as to rate of tax or the procedure relating to assessment and collection of tax, can be canvassed before the assessing officer and the Appellate Assistant Commissioner, in assessment proceedings and appellate proceedings, respectively on all aspects of the case, and the assessing officer or the Appellate Assistant Commissioner has to give independent decision on the arguments before him. For all administrative purposes, the clarification given under sub-section (1) or (2) shall be binding on the officers subordinate to him by virtue of sub-section (3).

10.The provisions of the TNVAT Act also provides for Clarification and Advance Ruling under Section 49-A, which also contains similar provisions as contained in Sub-Section (4) of Section 77 of PVAT Act, except that there is no provision in paramateria under Section 77(3) of PVAT Act. Therefore, this Court has to interpret what would be intent and purport of the legislation, namely Section 77(3) of the PVAT Act. The Assessing Officer would seek to rely upon Sub-section (3) of Section 77 to state that he cannot decide any issue in respect of which an application has been made by an applicant under the said Section and is pending.

11.The crucial words to be interpreted are "an application" and "an applicant" occurring in sub-section (3) of Section 77 of PVAT Act. In my considered view, in the present factual matrix, both these expressions can refer to only the assessee/dealer, who has approached the authority under Section 77 of the PVAT Act. If any other interpretation is to be given, then it would be expanding the scope of Sub-section 3 of Section 77 of the PVAT Act and would be directly in conflict with Section 30(2) of the PVAT Act, which prescribes an outer time limit for the Assessing Officer to re-do an assessment in the event he comes to a conclusion that the assessee has been assessed to lower rate of tax. In other words, if the interpretation given by the respondent is to be accepted, the finality attached to an order of assessment itself would be lost, as sub-section (2) of Section 30 of the PVAT Act would be rendered otiose."

6.If the above referred decision is applied to the case on hand, the only irresistible conclusion to be arrived at is that the order passed by the Appellate Assistant Commissioner in dismissing the petitioner's appeal without considering the matter on merits is incorrect and not legally sustainable. This is sufficient to set aside the impugned order. It is seen that at the time, when the petitioner filed the appeal petition before the first respondent, the petitioner had paid 12.5% of the disputed tax for each of the assessment both under the PVAT Act and under the CST Act.

7.The learned Government Advocate appearing for the respondents, on instructions from the officials of the respondent concerned who are present in Court along with the files, submits that pursuant to the attachment of the petitioner's bank account, a sum of Rs.50,000/- has been realised.

8.The petitioner also seeks for lifting the bank attachment. The petitioner is directed to pay further sum of Rs.2,00,000/- for each of the assessments both under the PVAT Act and the CST Act and the petitioner is granted 15 days time to pay the same before the Assessing Officer.

9.In the result, the Writ Petitions are allowed and the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration and to take decision on merits after dealing with the grounds raised by the petitioner, affording adequate opportunity to the authorised representative of the petitioner. As mentioned above, the petitioner is directed to pay a sum of Rs.2,00,000/- for each of the assessments both under the PVAT Act and the CST Act within a period of 15 days from the date of receipt of a copy of this order. Subject to said condition, the attachment of the petitioner's bank account shall be lifted. Till the appeals are disposed of, no coercive action shall be initiated against the petitioner for recovering the balance tax amount as quantified by the Assessing Officer in the order dated 10.08.2017. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To
1.The Appellate Assistant Commissioner [CT],
Commercial Taxes Department,
100 Feet Road, Pudupalayam,
Puducherry.

2.The Assistant Commercial Tax Officer-I,
Government of Puducherry,
Commercial Taxes Department,
Puducherry.

+1 CC to Mr.K. Vaitheeswaran, Advocate sr 3991.
+1 CC to Govt. Pleader sr 4317 to 4319.

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and
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NRJK(CO)
SP(06/02/2018)