IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.31614 of 2013
and
M.P.No. 1 of 2013

M/s.Sheela Foam (P) Ltd.
Rep by its Head of Department Legal
Manufacturers Polyurethane Foam
SIPCOT Industrial Growth Centre
Perundurai. ...Petitioner

Vs.

The Assistant Commissioner (CT)(FAC)
Perundurai, Erode District. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN.33292925161/2012-2013, quash the proceedings 23.10.2013 issued therein.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

Heard Mr.B.Raveendran, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing on behalf of the respondent.

2.The petitioner who is a dealer registered under the provisions of the Tamil Nadu Value Added Tax, 2006, (in short "the Act") has filed this Writ Petition, challenging an assessment order passed under Section 25 of the TNVAT Act for the year 2012-2013.

3.The learned counsel appearing for the petitioner though raised several grounds challenging the impugned assessment order, it is submitted that after passing of the impugned assessment order, a clarification has been issued by the

Authority for Clarification and Advance Ruling and the clarification is squarely applicable to the case of the petitioner and the appropriate tax that could be levied is 5%. The copy of the clarification dated 23.10.2014 was furnished and a copy of the same was also handed over to the learned Additional Government Pleader to verify from the department as to whether the clarification would apply to the petitioner's case.

4.Today when the matter is taken up, the learned Additional Government Pleader on instructions from the respondent submitted that the clarification dated 23.10.2014 would squarely apply. The clarification sought for before the Advance Ruling Authority was to re review the clarification in respect of Polyurethane Foam. The Authority after considering all the contentions raised, held as follows:-

> 8.As correctly pointed out by the applicant dealers, Notification No.II(1)/CTR/12(R-20)/2011 in G.O.Ms.No.78, Commercial Taxes and Registration (B2) Department, dated 11.07.2011, issued under Section 30 of the Act, provides reduction in rate of tax to 5% for several commodities which are normally taxable at 14.5% and one among them in serial no.13 is related to Plastic goods, the description of which reads as extracted below:
>
> "All plastic goods other than doors, windows, frames profiles, automoble, industrial and sanitary items"
>
> Originally the rate of tax was reduced from 12.5% to 4% with effect from 01.01.2007, under notification no.II(1)/CTR/3-(a-5)/2007 in G.O.No.79, dated 23.03.2007. Inadvertently, this fact of reduction in rate as per the aforesaid notification was not considered by the Advance Ruling Authority while its earlier clarification dated 25.07.2012 and 03.12.2013.
>
> 9.It is pertinent to mention here that the same issue has already been taken up for review on application from Tvl.Kurlon Limited, the party originally affected by the clarification advanced in the proceedings in ACAAR No.15/2012-13, dated 25.07.2012 and clarified on the lines of the Notification No.II(1)/CTR/12(R-20)/ 2011 in G.O.Ms.No.78, Commercial Taxes and Registration (B2) Department dated 11.07.2011.
>
> > 10.The applicant-association is also clarified on similar lines as below:
> >
> > The polyurethane Foam is a plastic product, liable to tax at reduced rate of 5%, as per Entry in Sl.No.13 in the list of goods, which are normally taxable at 14.5% under Part-C of first schedule, under

notification No.II(1)/CTR/12(R-20)/2011, in G.O.Ms.No.78, Commercial Taxes and Registration (B2) Department dated 11.07.2011, brought into effect from 12.07.2011.

In any event of having clarified as above, the earlier clarification vide proceedings in ACAAR No.15/2012-13, dated 25.07.2012 and ACAAR No.30/2013-14, dated 03.12.2013 need not be rescinded.

5.By virtue of the above clarification, Polyurethane Foam is a plastic product and liable to be taxed at the rate of 5%, as per Entry in S.No.13 in the list of goods, which are normally taxable at 14.5% under Part-C of Schedule, under Notification in G.O.Ms.No.78, dated 11.07.2011 brought into effect from 12.07.2007. In the light of the above clarification, the impugned assessment order is liable to be set aside. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent with a direction to apply the clarification given by the Authority for Clarification and Advance Ruling in ACAAR No.15/2012-13 & ACAAR No.30/2013-14, dated 23.10.2014, and redo the assessment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

maya/kak

To
The Assistant Commissioner (CT)(FAC)
Perundurai, Erode District.

+1cc to Mr.B.Raveendran, Advocate Sr.No.8045
+1cc to Special Government Pleader SR.No.9062

SV(CO)
sm:20.2.2018