IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.02.2018

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

WP.No.33426/2012 & MP.No.1/2012

M/s.Royal Trading Centre
No.230 to 234, Pycrofts Road
Royapettah, Chennai 600 014. .. Petitioner

Versus

1.The Joint Commissioner [CT]
Chennai [East] Division Chennai 600 006.

2.The Commercial Tax Officer
Thiruvallikeni-II Assessment Circle,
Chennai 600 086. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the 1st respondent in his proceedings in Rc.No.4785/2011/A4-TIN 333406-80699/2007-08 and quash the proceedings dated 01.11.2012 issued therein.

For Petitioner : Mr.B.Raveendran

For Respondents : Mr.G.Ahamed, GA

ORDER

With the consent of the learned counsels appearing on either side, the Writ Petition is taken up for final disposal.

2 The petitioner who is a dealer registered under the provisions of the Tamil Nadu Value Added Tax, 2006, (TNVAT Act), has filed this Writ Petition, challenging the revised assessment order passed under Section 25 of the Tamil Nadu Value Added Tax Act, (TNVAT Act) for the year 2007-08.

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 Government Advocate to verify from the department to whether the clarification would apply to the petitioner's case.

4 Today when the matter is taken up, the learned Government Advocate, on instructions from the respondents submitted that the clarification dated 23.10.2014 would squarely apply. The clarification sought for before the Advance Ruling Authority was to review the clarification in respect of Poly Urethane 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, automobile, 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 the event of having clarified as above, the earlier clarifications, 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 liable to be taxed at reduced 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 Schedule, under Notification in G.O.Ms.No.78, dated 11.07.2011 brought into effect from 12.07.2007.

6 In the light of the above clarification, the impugned assessment order is liable to be set aside. Accordingly, the Writ Petition is allowed and the impugned order is set aside and the matter is remanded to the respondents with a direction to apply 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

AP

To

1.The Joint Commissioner [CT]
Chennai [East] Division Chennai 600 006.

2.The Commercial Tax Officer
Thiruvallikeni-II Assessment Circle, Chennai 600 086.

+3 CC to Mr.B.Raveendran Advocate Sr.No.10133

+1 CC to Special Government Pleader, High Court, Chennai
Sr.No.10927

WP.No.33426/2012

SK(CO)
KP(27/02/2018)