kIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.29476 to 29480 of 2013
&
M.P.Nos.1+1+1+1+1 of 2013

M/s.Gates Unitta India Co. Ltd.,
Rep. by its Director
No.126, Mount Poonamallee Road
Porur
Chennai - 600 116 ... Petitioner in all WPs

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government
CT & RE Department
Chennai - 9

2.The Assistant Commissioner (CT) (FAC)
Alandur Assessment Circle
No.12, Vedhagiri Street
Alandur
Chennai - 600 016 ...Respondent in all WPs

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order passed by the 2nd respondent in TIN/33180842874/2006-07, 2007-08, 2008-09,2009-10, 2010-11 respectively all dated 30.08.2013 and quash the same as illegal, contrary to the ruling of the Authority for Advance Ruling in A.C.A.A.R.89/2012-13 dated 11.02.2013 and contrary to law and unsustainable in law.

For Petitioner in all WPs : Mr.M.A.Mudimannan

For Respondents in all WPS : Mr.M.Hariharan
Additional Government Pleader

COMMON ORDER

Heard Mr.A.Mudimannan, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondents.

2.The petitioner has filed these writ petitions challenging the Assessment Orders under the provisions of Tamil Nadu Value Added Tax Act, 2006 for the Assessment years 2006-07 to 2010-11. The petitioner has challenged the rate of tax levied at 12.5% on the commodity supplied by them to the automotive industry. The petitioner relies upon a clarification issued vide Notification dated 19.09.2007 in Notification No.VCC/1272/2007, which states that the various beltings used for car/van/trucks is taxable at 14% under entry 16 of Part B of I schedule of the Act. The petitioner also referred to an Advance Ruling passed under Section 48-A of the Act dated 11.02.2013, which states that belts are suitable for wet-grinders, oil engines, motor vehicles etc., and fits into the description given under Entry 16 of Part B of the First schedule and are taxable at 5%. As the rate of tax increased from 4% to 5% with effect from 12.07.2011 by Act No.330 of 2011, the respondent issued revision notice dated 28.02.2013, alleging that there is no documentary evidence produced by the petitioner to prove that the rate of tax is only 4%/5% and taxed the petitioner at 12.5%. The petitioner submitted an objections dated 27.05.2013 referring to the clarification as well as the advance ruling and stated that the correct rate of tax is only 4%.

3. However, the respondent, without taking note of the said submission, in a single line, rejected the petitioner's contention as not acceptable. In the counter affidavit, the respondent seek to improve upon the stand taken in the impugned order by stating that Advance Ruling was not produced before the Assessing Officer before passing the impugned order.

4. This is submission is factually incorrect. The petitioner, in their objection dated 27.05.2013, has specifically referred to the clarification issued in the notification as well as the Advance Ruling. Apart from that the respondent would submit that Form S declaration was not produced. At the first instant it has to be noted that the respondent did not assign any reason for rejecting the petitioner's objection dated 27.05.2013 and by way of a counter affidavit, the respondent cannot be permitted to substitute the impugned order. Thus, the Court has fully satisfied that the impugned orders are in total violation of principles of natural justice.

For the above reasons, the writ petitions are allowed and the respondent is directed to afford an opportunity of personal hearing to the petitioner and apply the Advance Ruling given under Section 48-A of the Act dated 11.02.2013 and receive Form S declaration, which shall be produced the petitioner and redo the assessment in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

To

1.The Secretary to Government
CT & RE Department
Chennai - 9

2.The Assistant Commissioner (CT) (FAC)
Alandur Assessment Circle
No.12, Vedhagiri Street
Alandur
Chennai - 600 016.

+1cc to Mr.K.Jayachandran, Advocate SR.No.37111
+1cc to Special Government Pleader SR.No.37660

W.P.Nos.29476 to 29480 of 2013 &
M.P.Nos.1+1+1+1+1 of 2013

KGK(CO)
GN(25/06/2018)