BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.11.2018
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).Nos.5377 to 5382 of 2018 and
W.M.P.(MD)Nos.5323 to 5328 of 2018

M/s.Kalyani Covering,
Represented by its Proprietor G.Subramanian,
214-A, Jawahar Bazaar,
Karur. ... Petitioner in all petitions

Vs.

1. The Deputy Commissioner(CT),
Trichy, Commercial Tax Buildings,
Court Campus, Trichy.

2. The Deputy Commissioner(CT),
Enforcement Wing, Trichy Division,
Commercial Tax Buildings,
Court Campus, Trichy.

3. The Assistant Commissioner(CT),
Karur(North) Assessment Circle,
Commercial Taxes Buildings,
Karur. ... Respondents in all petitions

PRAYER in W.P.(MD)No.5377 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in TIN 33833660609/2010-11, dated 12.01.2018 issued by the third respondent and quash the same as illegal, arbitrary without jurisdiction and against the proceedings of the Authority for Clarification and Advance Ruling, Chennai, in ACCAR No.03/2016-17 Act Cell-II/9437/2016, dated 30.12.2016 passed under Section 48A of the Tamilnadu Value Added Tax Act 2006.

PRAYER in W.P.(MD)No.5378 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in TIN 33833660609/2011-12, dated 12.01.2018 issued by the third respondent and quash the same as illegal, arbitrary without jurisdiction and against the proceedings of the Authority for Clarification and Advance Ruling, Chennai, in ACCAR No.03/2016-17 Act Cell-II/9437/2016, dated 30.12.2016 passed under Section 48A of the Tamilnadu Value Added Tax Act 2006.

PRAYER in W.P.(MD)No.5379 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in TIN 33833660609/2012-13, dated 12.01.2018 issued by the third respondent and quash the same as illegal, arbitrary without jurisdiction and against the proceedings of the Authority for Clarification and Advance Ruling, Chennai, in ACCAR No.03/2016-17 Acts Cell-II/9437/2016, dated 30.12.2016 passed under Section 48A of the Tamilnadu Value Added Tax Act 2006.

PRAYER in W.P.(MD)No.5380 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in TIN 33833660609/2013-14, dated 12.01.2018 issued by the third respondent and quash the same as illegal, arbitrary without jurisdiction and against the proceedings of the Authority for Clarification and Advance Ruling, Chennai, in ACCAR No.03/2016-17 Act Cell-II/9437/2016, dated 30.12.2016 passed under Section 48A of the Tamilnadu Value Added Tax Act 2006.

PRAYER in W.P.(MD)No.5381 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in TIN 33833660609/2014-15, dated 12.01.2018 issued by the third respondent and quash the same as illegal, arbitrary without jurisdiction and against the proceedings of the Authority for Clarification and Advance Ruling, Chennai, in ACCAR No.03/2016-17 Act Cell-II/9437/2016, dated 30.12.2016 passed under Section 48A of the Tamilnadu Value Added Tax Act 2006.

PRAYER in W.P.(MD)No.5382 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in TIN 33833660609/2015-16, dated 12.01.2018 issued by the third respondent and quash the same as illegal, arbitrary without jurisdiction and against the proceedings of the Authority for Clarification and Advance Ruling, Chennai, in ACCAR No.03/2016-17 Act Cell-II/9437/2016, dated 30.12.2016 passed under Section 48A of the Tamilnadu Value Added Tax Act 2006.

(in all petitions)
For Petitioner : Mr.S.Karunakar
For Respondents : Mr.K.Mu.Muthu,
Additional Government Pleader.

COMMON ORDER

The petitioner is a dealer dealing in imitation jewellery including bangles. He is an assessee registered with the third respondent. The case on hand pertains to the years 2010-2011 up to 2015-2016. The petitioner had originally filed his returns and they were deemed to have been assessed in terms of Section 22(2) of the Tamil Nadu Value Added Tax Act.

2. Based on the inspection report filed by the Enforcement Wing, the third respondent issued a pre revision notice dated 12.12.2016.The Writ petitioner submitted his reply dated 28.12.2016. Not satisfied with the same, the impugned orders came to be passed on 12.01.2018, confirming the proposal made in the pre revision notice dated 12.12.2016. Challenging the same, these Writ petitions have been filed.

3. Heard, Mr.S.Karunakar, learned counsel appearing for the petitioner and Mr.K.Mu.Muthu, learned Additional Government Pleader appearing for the respondents.

4. Mr.Saravanan Sataiappan, Assistant Commissioner, Karur (North), is present in person and assisted the Court.

5. The case on hand pertains only to sale of imitation bangles. The specific case of the petitioner is that the said imitation bangles are made by using base metals. In other words, no precious metals are used in making these imitation bangles. The petitioner had earlier moved the authority for Clarification and Advance Ruling, Chennai, in this regard. The said authority by proceedings dated 30.12.2016 ruled as follows:-

> "4. Entry-7 of Part-B of First Schedule to the TNVAT Act, 2006 reads as follows:-
>
> '7(a) Articles and jewellery made of rolled gold and imitation gold.
>
> (b) Imitation jewellery.'
>
> However, bangles are specifically enumerated under Entry-9 of Part-B of Fourth Schedule to the TNVAT 2006, reads as follows:-
>
> '9.Bangles other than those made of precious metals'
>
> As per the law evolved in commodity taxation, if there is conflict in classification of a commodity between a general entry and a specific entry, the specific entry would over-rule the general entry. In the case of the applicants, imitation jewellery is general entry and bangle is specific entry. Therefore, all bangles other than those made of precious metals would fall under the specific Entry-9 of Part-B of Fourth Schedule to the TNVAT 2006, notwithstanding the fact that the applicant is generally dealing in imitation jewellery.
>
> 5. It is therefore clarified that 'Bangles other than those made of precious metals' are eligible for exemption from VAT liability under Entry-9 of Part-B of Fourth Schedule to the TNVAT 2006."

6. Since the petitioner's reply was further armed with the aforesaid ruling issued by the said authority, the third respondent sent a deviation proposal to the enforcement wing. In other words, the third respondent was apparently convinced by the stand taken by the petitioner herein. But then, the Deputy Commissioner of Commercial Tax, Enforcement Wing, Trichy, disagreed with the said deviation proposal. According to the Enforcement Wing, generally, covering bangles are made up of certain percentage of precious metals such as gold and silver. Therefore, according to the Enforcement Wing, the case on hand would rather fall under Entry-7 part B of 1st schedule of T.N.V.A.T. Act, 2006. Hence, instruction was given to the assessing authority to implement the proposal originally made as per the pre revision notice.

7. The impugned order was passed in terms of the aforesaid stand taken by the Enforcement Wing.

8.As rightly pointed out by the learned counsel appearing for the petitioner, the petitioner has convincingly demonstrated before the Clarification and Advance Ruling authority that the bangles in question are not made up of any precious metals. In other words, gold and silver component is absent in the present case. On the other hand, the material used in these imitation bangles are base metals. In fact the petitioner has pointed out that metals such as aluminium, brass, copper, lead, nickel etc., are used in making such bangles. It is obvious that the third respondent has not taken note of the stand so categorically and unambiguously set out in the reply dated 28.12.2016.

9. In this view of the matter, the orders impugned in these Writ petitions are set aside in so far as they pertain to imitation bangles. In respect of other defects pointed out by the third respondent, I am of the view that the matter will have to be once again heard and orders will have to be passed afresh by the third respondent, after affording an opportunity of personal hearing to the petitioner herein.

10. The Writ petitions stand partly allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Deputy Commissioner(CT),
   Trichy,
   Commercial Tax Buildings,
   Court Campus, Trichy.

2. The Deputy Commissioner(CT),
   Enforcement Wing,
   Trichy Division,
   Commercial Tax Buildings,
   Court Campus, Trichy.

3. The Assistant Commissioner(CT),
   Karur(North) Assessment Circle,
   Commercial Taxes Buildings,
   Karur.

+1CC to Mr.S.Karunakar, Advocate, SR.No.95845
+1CC to the Special Government Pleader SR.No.95826

W.P.(MD).Nos.5377 to 5382 of 2018 and
W.M.P.(MD)Nos.5323 to 5328 of 2018
16.11.2018

PMU
ES/SKN/RSK/SAR 2/19.12.2018/5P/6C