IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

WRIT PETITION NOS.14333 TO 14337 OF 2008

M/s.Pioneer Agro Industry
No.54, Stanes Road, 4th Street,
Tirupur – 641 602, Coimbatore
...Petitioner in the above W.Ps

Vs

1. Commissioner of Commercial Taxes
   Ezhilagam, Chepauk,
   Chennai – 600 005.

2. The Commercial Tax Officer,
   South Car Street,
   Cheiyur, Avinashi, Coimbatore.
... Respondents in the above W.Ps

Prayer in W.P.No.14333 of 2008:

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, calling for the records of the 1st respondent herein in D.Dis.Acts Cell-II/63301/2003 dated 22.04.2004 and quash the same as illegal and without jurisdiction of authority and as the same is violative of the provisions of TNGST Act, 1959.

Prayer in W.P.Nos.14334 to 14337 of 2008:

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, calling for the records of the 2nd respondent herein in passing of the order dated 30.05.2008 in Ref.TNGST 2082277/05-06, CST No.670723/05-06, TNGST 2082277/04-05 and CST No.670723/04-05 and quash the same.

For Petitioner : Mr.S.R.Raghunathan

For Respondents : Mr.Haribabu, AGP (Taxes)

C O M M O N O R D E R

This batch comprises five Writ Petitions, the first, W.P.No.14333 of 2008, challenging a Circular issued on 22.04.2004 in relation to the rate of tax in regard to 'Coconut Shell powder' for the purpose of assessment in terms of the Tamil Nadu General Sales Tax Act, 1959 (in short, 'TNGST Act') and the remaining four Writ Petitions challenging orders of assessment for the periods 2004-05 and 2005-06, passed in terms of the provisions of the TNGST Act as well as the Central Sales Tax, 1956 (in short 'CST Act').

2. The petitioner is a manufacturer of Coconut Shell Powder, registered as a dealer on the file of the second respondent, the Commercial Tax Officer.

3. The commodity dealt with by the petitioner had been classified under Entry 70/Part B/Schedule I to the TNGST Act between the periods 01.04.1994 and 27.03.2002, exempt from the levy of sales tax. The Entry reads as follows:

'........ Coconut Shell and its chips'

4. The understanding of the Commercial Taxes Department was thus that the commodity dealt with by the petitioner, Coconut Shell powder, would fall within the category of 'coconut shell and its chips' in all assessments of the petitioner till the period 2003-04.

5. This interpretation, both by the petitioner as well as the Department, was supported in full by a Clarification issued by the Principal Commissioner and Commissioner of Commercial Taxes in D.Dis.Acts Cell II /83779/99, dated 25.2.2000 in terms of Section 28 A of the Act, which reads as follows:

> 'Sub: TNGST Act 59 – Rate of tax Clarification Under Section 28-A of the Act – for "Coconut Shell Powder" - Requested – Reg.
>
> Ref: From Tvl. Sarie Products, Salem – 636 002 Letter dated 16.11.99 & 27.11.99.
>
> Tvl. Sarie Products, Salem in their letter cited have requested clarification on rate of tax Under Sec 28-A of the TNGST Act 59 for Coconut Shell Powder.
>
> The details with sample furnished by the petitioner have been perused and the following clarification on rate of tax is issued:-
>
> "Coconut Shell Powder" is clarified under the category "Coconut husk", "Coconut Shell and its Chips"

in Sl.No.75 of Part-B of the Third Schedule to the TNGST Act 59 liable for exemption.'

6. There is no quarrel with regard to the above position, effective till 31.03.2004. On 22.04.2004, the Commercial Taxes Department appears to have had a change of heart and issued the impugned Clarification in D.Dis.Acts.Cell-II/63301/2003 to the effect that the rate of tax as clarified under Section 28A of the TNGST Act for 'Tapioca thippi flour and coconut shell powder', shall be 12% on first sales as per the residuary Entry, i.e., Entry No.40/Part D/ Schedule I to the Act. This is the clarification under challenge.

7. Based on the aforesaid clarification, orders of assessments have been passed both in respect of TNGST and CST for the periods 2004-05 and 2005-06, that are also impugned. To complete the sequence of narration, with the advent of the Value Added Tax regime and the enactment of the Tamil Nadu Value Added Tax Act, 2006, the position pre 22.02.2004 came to be restored by the Commercial Taxes Department. The relevant Entry now is Entry 61(ii)/Part B/ Schedule IV, which continues to read 'Tapioca kappi, Tapioca thippi, groundnut shell, coconut shell and its chips' as it did in the regime of the TNGST Act.

8. The language of the two Entries remains identical, both pre 2002 under TNGST Act, for the period between 2002 and 2007, and post 2007 under the VAT regime. The understanding of the Department for the period till the date of impugned Clarification and in the VAT regime is to the effect that 'coconut shell powder' would be categorised within the ambit of 'coconut shell and its chips'. There is thus absolutely no logic or reasoning to support impugned Clarification dated 22.04.2004, which takes a view diametrically opposed to the view taken by the Commercial Taxes Department pre 22.04.2004 and post 01.01.2007. The offending view taken for the interim period of two years and nine months, is, in my view, an aberration, unsustainable in law.

9. Simultaneous therewith, a Notification was issued bearing G.O.Ms.No.79, Commercial Taxes and Registration (B2) Department dated 23.03.2007, to the effect that the turnover from sale of coconut shell powder would stand exempt from tax.

10. The aforesaid Notification is a mega Notification dealing with various commodities under the VAT regime. The relevant portion of the Notification reads as follows:

Commercial Taxes and Registration [B2] Department

G.O. Ms. No.79

Dated: 23.03.2007.

Read:

ORDER:

The Notifications annexed to this order will be published in the Extraordinary issue of the Tamil Nadu Government Gazette dated the 23rd March, 2007.

(BY ORDER OF THE GOVERNOR)

M. DEVARAJ

SECRETARY TO GOVERNMENT

....

NOTIFICATION-II.

In exercise of the powers conferred by sub-section (1) of section 30 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), the Governor of Tamil Nadu hereby makes an exemption in respect of tax payable under the said Act by any dealer on the sale of following goods: -

....

8 Coconut shell powder

.....'

11. Turnover from sale of Coconut Shell Powder was thus not liable to tax and the exemption, as granted from 1994 onwards, has been correctly understood, interpreted and clarified by the Special Commissioner in Notification dated 25.02.2000.

12. The defence of Mr.Haribabu, learned Additional Government Pleader is that there is no res judicata as far as a fiscal statute is concerned and each year must be dealt with separately. True. However the principles of res judicata cannot be urged to militate against the principles of consistency. There has to be a uniform approach followed by the Department as well by an assessee in the taxation of turnover from the sale of a specified commodity over the years.

13. The Department also argues in counter that the distinction between 'Coconut Shell Powder' and 'Coconut shell and its chips' would flow from a distinction in usage, where the commodity is used as a raw material in the manufacture of agarbathis and mosquito coils. In my view, the counter seeks to extend the scope of the impugned Clarification, since there is no reference to agarbathis or mosquito coils anywhere in the impugned Clarification itself. That apart, as a dealer in coconut shell powder, the assessee/petitioner cannot be expected

to be aware of the end use of the material supplied by it, and neither is the end use, in my view, material.

14. Learned counsel for the petitioner has sought to rely on certain judgments of the High Courts and Supreme Courts in support of the classification, as urged by him that I do not deem necessary to dwell upon in the light of my conclusion as above.

15. The impugned Clarification is quashed in the light of the aforesaid discussion. As a consequence, the assessments for the periods 2004-05 and 2005-06 (TNGST and CST) based on the aforesaid Clarification are set aside.

16. All the above Writ Petitions are allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Commercial Taxes
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Commercial Tax Officer,
   South Car Street,
   Cheiyur, Avinashi, Coimbatore.

+1cc to Mr.S.R.Rajagopal, Advocate, S.R.No.86286
+1cc to the Special Government Pleader (T), S.R.No.86610

Writ Petition Nos.14333 to 14337 of 2008

PA(CO)
CS/09/01/2020