IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20289 of 2012
and M.P.No.1 of 2012

M/s.T.I.Industries,
Rep.by its Proprietor,
S.No.14,Edissia Industrial Estate,
Karur Bye-pass Road,
Erode .. Petitioner

vs.

1.The Assistant Commissioner (CT)
Erode (Rural)
Erode.

2.The Principal Secretary,
Commissioner of Commercial Taxes,
Ezhilagam, Chennai . .. Respondents

Prayer : Writ petition is filed under Article 227 of the Constitution of India, praying for a writ of certiorari calling for the records of the 1st respondent in TIN No.33222903908/07-08 and quash the order dated 31.05.2012.

For petitioner : Mr. B.Raveendran

For Respondents : Mr.V.Haribabu AGP(T)

ORDER

The petitioner is engaged in trading of unbranded types of furniture. The assessment was completed on 24.01.2011 for the assessment year 2007-08 accepting the claim of the petitioner in terms of G.O.Ms.No.79 CT & RE (B2) dated to 23.3.2007. As per the said notification, unbranded steel furniture were liable to tax at 4%.

2. The petitioner was later issued with a notice dated 18.08.2011 to show cause as to why unbranded furniture sold by the petitioner should not be taxed at 12.5% with effect from 01.01.2007. By the impugned order, the respondent has confirmed the demand proposed in the said notice.

3. The petitioner has challenged the impugned order dated 31.05.2012 as it has been passed by relying on the clarification issued by the 2nd respondent dated 01.08.2007 bearing reference Commercial Taxes Letter No.VAT Cell CelL/31932/2007/VCC No 959 it has been clarified as under:-

> 5. "216 Steel Furniture fitted with any combination of accessories like plywood, cuttings, cushion, nylon, plastic moulds: Unbranded Furniture made of steel alone are taxable at 4%. Unbranded furniture made in combination with good or plastic are different and taxable at 12.5% with effect from 1.1.2007 ."

4. The learned counsel for the petitioner submits that by a clarification dated 27.6.2007 bearing Reference No. VAT/Cell/28588/2007 (VCC 770), the Commissioner of Commercial Taxes had already clarified as follows:-

1	Small portion of wood or plywood is isued on top portion 80% of the table is only steel	If unbranded it is 4%. If branded it is 12.5% under Part C of the First Schedule.
2	Chairs (Revolving Chairs) very little quantity of plywood foam used.	If made of steel and not branded it is 4%. Otherwise 12.5% under Part C of the First Schedule.

The learned counsel therefore submits that the impugned order is not sustainable.

5. Per contra, learned counsel for the respondents submits that the impugned order cannot be assailed in the writ petition as petitioner has an alternate remedy. It is further submitted that the petitioner had purchased goods such as plywood, teak wood, Mica etc., on payment of tax at 12.5% and also pipes, tubes and other goods used in the manufacture of furniture. Therefore, there is no error in the impugned order.

6. The learned counsel for the respondents further submits that on verification of the records of the petitioner, it was found that manufactured and sold by the petitioner were not hundred percent steel furniture and therefore they were liable to tax at 12.5% under item 69 (C,C No.3) Part C of the 1st Schedule Tamil Nadu VAT Act, 2006.

7. Heard learned counsel for the petitioner and the respondents. It is noted that the impugned order has been passed by placing reliance on the Commercial Taxes Letter No.VAT

Cell/31932/2007/VCC No.959 of the Department denying the benefit of notification exemption to "Unbranded Furniture sold by the petitioner.

8. An assessing officer while assessing or reassessing the classification of the goods is not bound by the clarifications of his superiors. He has independently come to a conclusion as to whether the furniture manufactured and sold by the petitioner were " Unbranded Steel Furniture" within the meaning of the above exemption notification or not.

9. The law on the subject is well settled. In the matters of classification, it is the commercial parlance test which is relevant and has to be adopted by the assessing officer. He has to decide as to how the product is treated in the market by the men of commerce in the trade. It is not the clarification or a particular view of the superior officer which should weigh his mind though such clarifications in the matters of classifications may be a relevant factor. However, they are not the only factors which are relevant.

10. In the light of the above discussion, the impugned order is set aside and the case is remitted back to the 1st respondent to pass an independent order uninfluenced by either of the clarifications of the Department.

11. The 1st respondent is directed to pass a speaking order within a period of 3 months from date of receipt of this order. Petitioner may file additional representation if any, in the de novo proceedings. Needless to state, the petitioner shall be heard before final order are passed. The Writ Petition stands disposed with the above observation. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.S.VI)

/True Copy/

Sub Assistant Registr

To
1.The Assistant Commissioner (CT),Erode (Rural), Erode.
2.The Principal Secretary,
Commissioner of Commercial Taxes, Ezhilagam, Chennai .

+1 cc to The Special Government Pleader (Taxes), SR.No.104071

AKM/05.03.2020/3P-4C / W.P.No.20289 of 2012
and M.P.No.1 of 2012