IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.32515 of 2013
and
M.P.No.1 of 2013

M/s.Sheela Foam (P) Ltd.,
Rep.by its Head of Operations,
SIPCOT Industrial Growth Centre,
Perundurai, Erode District. ..Petitioner

Vs.

The Assistant Commissioner (CT) (FAC),
Perundurai,
Erode District. ..Respondent

Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN. 33292925161/2013-2014, quash the notice dated 07.11.2013 issued therein.

For Petitioner : Ms.C.P.Priya
for M/s.G.Raveendran

For Respondent : Mrs.Dhanamadhri
Government Advocate

ORDER

The issue involved in the present writ petition has been clarified by the Advance Ruling Authority to a clarification dated 23.03.2007, to the effect that 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%. In identical circumstances, this Court had also relied upon such clarifications and set aside the similar orders. The relevant paragraphs are extracted hereunder:

> " 4.Today when the matter is taken up, the learned Additional Government Pleader on instruction 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."

2. Since the order impugned in the present writ petition is covered by the Advance Ruling, the impugned order is set aside and the matter is remanded back to the respondent with a direction to the authority for clarification and advance ruling in proceedings in TIN No. 33292925161/2013-2014, dated 07.11.2013, to redo the assessment, as expeditiously as possible.

3.Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT) (FAC),
Perundurai, Erode District.

+1 cc to M/s.B.Raveendran,Advocate Sr.No. 60350
+1 cc to The Special Government Pleader (Taxes), SR.No.60884

AKM/12.09.19/3P-4C /

W.P.No.32515 of 2013