IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.09.2019

CORAM

THE HONOURNABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.16792 of 2019
and
W.M.P.No.16396 of 2019

M/s.V.L.S.Fibre,
rep. by its Partner Mr.V.Subramaniam
No.16, 3rd Cross Street,
Sriram Nagar,
Paruthipattu (Village),
Kamaraj Nagar (Post),
Avadi,
Chennai - 600 071. ...Petitioner

Vs.

Authority for Clarification and Advance Ruling,
represented by Principal Secretary/Commissioner of
Commercial Taxes, Government of Tamil Nadu,
Commercial taxes Department,
Commercial Taxes Ezhilagam,Chepauk,
Chennai - 600 005. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the records of the impugned order dated 30.05.2018 bearing reference ACAAR No.119/2015-2016- Acts Cell-II/4734/2016 passed by the respondent and quash the same and further direct the respondent to pass a fresh order in the petitioner application after providing an opportunity of personal hearing to the petitioner to make its submissions and to produce documents.

For Petitioner : Mr.Mohan
for Christopher Manoharan

For Respondent : Mr.Mohammed Shaddiq
Special Government Pleader(Tax)

O R D E R

The petitioner is aggrieved against the proceedings of the respondent dated 30.05.3018 and thus, has challenged the same with consequential relief for a direction to the respondent to pass a fresh order in the petitioner's application after providing an opportunity of personal hearing to the petitioner.

2. The case of the petitioner in short is as follows:

The petitioner is engaged in making pulp out of waste cement paper bags. The process consists of cutting the paper bags, trimming the edges and cleaning them for the final stage where the pulping is done. For the conversion of waste cement paper bags into pulps, it requires about 2400 litres of water which is the reason that the petitioner's pulp consist of 50% moisture. To sort out the issue of 50% moisture, the petitioner approached the respondent under Section 48-A of Tamil Nadu VAT Act, 2006. Through the said application dated 22.02.2016, the petitioner sought for clarification from the respondent under Section 48-A to allow a limit upto 50% moisture in the petitioner's material for doing their business. However, the respondent refused to clarify the issue by stating that such request is not within the purview of that Committee. The respondent, apart from stating so, has however, proceeded further to discuss and decide with regard to the rate of tax payable for the commodity 'waste cement bags pulp' and given a clarification that such commodity is taxable at 14.5%. The said decision of the respondent was made without providing an opportunity of personal hearing, which is mandated under Section 48-A of the Tamil Nadu VAT Act, 2006. Therefore, the present Writ Petition is filed.

3. A counter affidavit is filed by the respondent wherein it is stated that only when the application is rejected, the applicant shall be granted reasonable opportunity of personal hearing. On the other hand, if the Advance Ruling Authority proceeds to deal with the question raised in the application, no such personal hearing is contemplated in the present case. The Advance Ruling Authority has clarified the rate of tax of "Waste Cement Bags Pulp" is liable to tax under Entry 69 of Part C of the First Schedule of the Tamil Nadu VAT Act, 2006 at 14.5%. Therefore, the provision of an opportunity of personal hearing does not arise where the application has been entertained and the rate of tax in relation to sale of waste cement bags pulps has been clarified by the Advance Ruling Authority.

4. Learned counsel for the petitioner submitted that the issue raised before the respondent in their application is for allowing the limit upto 50% moisture deduction in their material for doing their business. He further contended that the rate of tax payable is 5% and in fact, the petitioner has not questioned such rate before the respondent and however, the respondent has chosen to clarify the rate also as 14.5% when such was not the issue raised before the respondent. In any event, the learned counsel for the petitioner submitted that the authority ought to have heard the petitioner in person before passing the impugned

order. Therefore, he submitted that the whole order passed by the respondent on both counts need to be set aside and the matter has to be remitted back to the respondent for rehearing the matter afresh after providing an opportunity of personal hearing.

5. On the other hand the learned Special Government Pleader submitted that the question raised in the application for allowing the limit upto 50% after moisture deduction in their material is not an issue to be considered within the purview of the respondent Committee and therefore, such question was rightly rejected as not feasible for compliance. He further submitted that the respondent in the impugned order further clarified as to what is the rate of tax applicable to waste cement bags pulp and therefore, the petitioner cannot question such clarification.

6. Heard both sides. Perused the materials placed before this Court. I have also gone through the impugned order as well as the application made by the petitioner dated 22.02.2016 before the respondent.

7. Perusal of the said application indicates that the petitioner raised an issue with regard to 50% moisture in their material for doing their business and in short, their request before the respondent committee is to give deduction in the quantum of the goods upto 50% moisture in their material while quantifying the tax payable at the rate applicable. The said request was rejected by the respondent by stating that it was not within the purview of the Committee. Thus, it is seen that the application filed by the petitioner is rejected. Whether such rejection can be made without providing an opportunity of personal hearing is the question which is answered by the proviso to Section 48-A of the Tamil Nadu VAT Act, 2006, wherein it is contemplated that no application shall be rejected under the said provision without giving the applicant reasonable opportunity of being heard. Though the learned Special Government Pleader sought to contend that the application of the petitioner was not rejected and on the other hand, the respondent has clarified the rate of tax payable for waste cement bags pulp, in view of the specific reason rendered by the committee at paragraph No.4.2 of the order, this Court is of the view that it is also an order of rejection of the petitioner's application and therefore, such order should have been made only after providing an opportunity of personal hearing as contemplated under Section 48A. Accordingly this Court is inclined to remit the matter back to the respondent for reconsidering the matter afresh on merits and in accordance with law after giving an opportunity of hearing to the petitioner. At the same time, this Court is not expressing any view on the merits of the observation made by the respondent at paragraph

No.4.2 of its order as it is for the respondent to consider and pass order afresh after giving an opportunity of hearing to the petitioner.

8. Accordingly, this writ petition is allowed and the impugned order is set aside and the matter is remitted back to the respondent for reconsidering the whole issue on merits and in accordance with law after giving due opportunity of personal hearing to the petitioner. Such exercise shall be done by the respondent within a period of four weeks from the date of receipt of a copy of this order.

9. At this juncture, learned counsel for the petitioner submitted that the petitioner may also be permitted to withdraw the application filed before the respondent, if he is so advised. Since this Court is remitting the matter back to the respondent for fresh consideration, it is open to the petitioner to make such request for withdrawal before the respondent, while taking up the matter for fresh consideration and if any such request is made, it is open to the respondent to consider whether such request for withdrawal is maintainable or not and pass orders accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vsi

To
The Principal Secretary/Comissioner of Commercial Taxes
Authority for Clarification and Advance Ruling,
Government of Tamil Nadu,
Commercial taxes Department,
Commercial Taxes Ezhilagam,Chepauk,
Chennai - 600 005.

+1cc to Mr.R.Anishkumar, Advocate Sr.80366
+1cc to the Spl Government Pleader(Taxes), SR.80806

W.P.No.16792 of 2019

(CO)
CB(24/10/2019)