IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.09.2019
CORAM
THE HONOURABLE Dr. JUSTICE ANITA SUMANTH
W.P.No.6482 of 2014

M/s.Kurlon Limited,
rep. by its Authorized Signatory
194, Pycrofts Road,
Royapettah,
Chennai - 600 014. .. Petitioner

Vs.

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

2.The Assistant Commissioner (CT),
Triplicane II Assessment Circle,
Chennai 600 006. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his proceedings in TIN No.33160680798/2013-14 and quash the provisional assessment order dated 07.02.2014 made therein and direct the respondent to pass fresh orders by following the decision of the Supreme Court in Civil Appeal No.4938-42 of 1990 dated 02.04.1996 as polyurethane foam falls under the chapter 39 of the Central Excise Tariff Act.

For Petitioner : M/s.C.Baktha Siromoni

For Respondents : Mr.M.Hariharan
Additional Government Pleader

O R D E R

This writ petition challenges an order of assessment dated 07.02.2014 in relation to the period 2013-2014 passed in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'). The Assessing Authority has, in bringing to tax turnover from the sale of P.U. foam sheets, levied tax at the rate of 14.5% on the understanding that the commodity would fall under entry 69/Part-C/1st Schedule, as confirmed by the order of the Authority for Clarification and Advance Ruling ('ACAR') in A.C.A.A.R.15/2012-2013 dated 25.07.2012.

2.Mr.C.Baktha Siromoni, learned counsel appearing for the petitioner, has circulated a subsequent clarification of the ACAR dated 02.12.2014, subsequent to the clarification relied on by the officer in the impugned order of assessment. This clarification has been sought by the petitioner/assessee before me by way of a review of the earlier clarification dated 25.07.2012 that had concluded that the commodity in question was taxable at 14.5%. After a detailed consideration of the matter, the ACAR, in the later clarification dated 02.12.2014, has found as follows:-

> '7.As correctly pointed out by the appellant 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/30(a-5)/2007 in G.O.No.79 dated 23.03.2007. Inadvertently, this fact of reduction in rare as per the aforesaid notification was not considered by the Advance Ruling Authority while its earlier clarification dated 25.07.2012.
>
> 8.Besides, the applicant-dealers have claimed that PU Foam Sheets are liable to be the inputs for manufacturers of Upholstery, Mattresses, Furniture and Sofa set. This fact is confirmed from the web literature on Polyurethane foam and its uses. The Polyurethane Foam sheets, even otherwise than there is no reduction in rate of tax by notification, would eligible to be treated as Industrial Inputs as within the scope of Entry 67 of Part-B of First Schedule, which enables the purchase of goods normally taxable at 14.5% under Part-C of the First Schedule at 5% against certification prescribed under Rule 6(3)(b) of TNVAT Rules, 2007.
>
> 9.The Clarification, based on the above observations, in this regard is as below:
>
> > The Polyurethane Foam is a plastic good, 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.'

3.A copy of this clarification was furnished to the learned Revenue counsel who, after obtaining instructions confirms that this clarification does indeed reflect the correct departmental view, currently prevailing.

4.Recording the same, this writ petition is allowed. The impugned order of assessment is set aside. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

2.The Assistant Commissioner (CT),
Triplicane II Assessment Circle,
Chennai 600 006.

+1cc to Special Government Pleader(Taxes) sr.78987

W.P.No.6482 of 2014

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