E IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.384 and 389 of 2020
and WMP Nos.436, 440, 444 and 448 of 2020

M/s.Devimani Sizing Mills
Rep by its Partner- Narayanakrishnan
No.51, Pavalam Street Municipal Colony
Erode- 638011 Erode District. ...Petitioner in both W.Ps.

Vs

The State Tax officer
Mettur Road Circle Erode Erode District
...Respondent in both W.Ps.

PRAYER : Petitions filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records on the file of the Respondent in its impugned proceedings made in TIN.33153044451/ 2012-13 and 2013-14 dated 30.10.2019 quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar in both WP's

For Respondent : Mr.T.N.C.Kaushik
Government Advocate in both Wp's

COMMON ORDER

The petitioner challenges two orders of assessment, both dated 30.10.2019, passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) for the periods 2012-13 and 2013-14.

2. The petitioner is engaged in the activity of sizing by way of job work for reeling yarns into beams using consumables such as maize starch, mutton tallow, softener with boiled water. The petitioner has been enjoying exemption in respect of the turnover from sizing from the year 1988 in line with G.O.P.No.1316 CT & RE, effective from 07.10.1988.

3. There has been no change in this position till 01.01.2007 and even thereafter with the advent of the TNVAT Act. The petitioner has been granted the relief till 2016 when orders

of assessment were passed rejecting its claim for the first time. As against the aforesaid orders of assessment, the petitioner filed applications under Section 84 of the Act seeking rectification of the assessments on the ground that the non-grant of exemption for sizing of yarn was a mistake apparent on record.

4. According to the petitioner, the benefit in terms of the 1988 G.O. would stand saved and continued be available even thereafter, till specifically withdrawn. The provisions of Section 88(3)(i) of the TNVAT Act that deal with repeal and saving state as follows:

> SECTION 88(3)(i) all rules, regulations, notifications, clarifications or orders made or issued under any of the provisions of the said Act or 1970 Act, as the case may be, and continuing in force on the date immediately before the commencement of this Act, shall continue in force on or after such date in so far as they are not inconsistent with the provisions of this act or the rules made thereunder until they are repealed or amended.

5. Thus, all Notifications issued under the provisions of the erstwhile Tamil Nadu General Sales Tax Act, 1959 or 1970 Act, as the case may be, that were in force as on the date of coming into effect TNVAT Act would continue, subject to they not being inconsistent with the provisions of the TNVAT Act or connected Rules or until such time they are repealed or amended.

6. According to the petitioner, it has been claiming benefit under the 1988 exemption notification consistently for all years including the years in question. No orders of assessment or returns have been filed for the periods 2007 to 2011 in support of this position. For the years 2012-13 and 2013-14, the Department, for the first time, has taken a divergent stand stating that since, in the context of TNVAT, exemption has been granted only with effect from 01.04.2015 under G.O.No.45 dated 25.03.2015, the petitioner would not be granted exemption for the prior periods.

7. A reading of Section 88(3)(i) would show that the burden is upon the revenue to establish that the benefit of a notification granting exemption prior to 01.01.2007 would not continue for any reason including that it was inconsistent with the provisions of the latter enactment, i.e,. TNVAT Act.

8. The case of the revenue in this matter is that the activity of sizing is a works contract and that this would make all the difference in the determination of whether the erstwhile exemption would continue.

9. I see no merit in this argument for the reason that, nothing turns on whether the activity of sizing has been undertaken as a works contract or job work for a third party. In the present case, the petitioner states that what it receives is only commission or cooly charges towards the labour contract of sizing. Even assuming that the activity was undertaken as a works contract, this would hardly have any bearing on the grant of exemption. The only question to be determined is whether the 1988 exemption notification would continue even in the era of the TNVAT Act or whether it would cease on 31.12.2006, to be revived only with G.O.No.45 dated 25.03.2015.

10. The provisions of Section 88(3)(i) are unambiguous and require the revenue to establish inconsistency in the TNVAT Act militating against the continuance of the exemption. In such a circumstances, the exemption granted under 1988 would continue until such time it were cancelled or modified.

11. The question would then arise is as to why G.O.45 dated 25.03.2015 was issued at all. I have no answer to this, except to state that it is redundant insofar as the exemption granted in 1988, in my view, continues uninterrupted and there was no necessity for the State to have issued G.O.No.45 at all.

12. In the light of the discussion as above, the impugned orders of assessment holding that there was no exemption as claimed by the petitioner for the activity of sizing of yarns for the periods prior to 01.04.2015, are set aside.

13. These Writ Petitions are allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
The State Tax officer,
Mettur Road Circle, Erode, Erode District.

+1cc to the Special Government Pleader(Taxes),Sr.35102

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NSK 27/09/2021