IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25510 of 2013
and
M.P.No.1 of 2013

M/s.Sathyanarayana Trading Company,
Rep., by its Managing Partner-P.Ranganathan,
No.70, Main Road,
Namakkal-637 001, Namakkal District. ...Petitioner

-vs-

1. The Authority for Clarification and Advance Ruling, rep. by its Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai-600 005.

2. The Assistant Commissioner (CT), Namakkal (Town), Namakkal, Namakkal District. ...Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the second respondent in its impugned proceeding in TIN: 33473120032/2007-08 dated 26.04.2013 and quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.V.Veluchamy,
Government Advocate

ORDER

The impugned revision notice dated 26.04.2013, issued by the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as “the TNVAT Act) pertaining to the assessment year 2007-08, is under challenge in the present writ petition.

2.The matter relates to the correct rate of tax on the sale of primers. The petitioner has paid tax at the rate of 4% and by the impugned notice, the second respondent seeks to tax the transaction at 12.5% as per Entry No.50 of Part C of the First Schedule to the TNVAT Act.

3.The reason for issuing the impugned notice during the year 2013 is on account of a clarification dated 14.02.2013 issued by the first respondent. The said clarification came to be issued at the instance of an application filed by a third party dealer and the Authority for Clarification and Advance Ruling clarified that primers of all kinds used as industrial inputs are taxable at 5% under Entry 67-A(ad)(iv) of Part B of the First Schedule to the TNVAT Act and if primers are sold other than as an industrial input, they are taxable at 14.5% under Entry 50 of Part C of the First Schedule to the TNVAT Act. Though the second respondent does not refer to the advance ruling in the impugned notice, the sum and substance of the impugned notice is as held by the Authority for Clarification and Advance Ruling dated 14.02.2013.

4.Just like the petitioner, several other persons were aggrieved by the advance ruling authority, who challenged the same before this Court by filing writ petition, in which liberty was granted to the writ petitioners to file a review petition under Section 48-A(4) of the TNVAT Act before the first respondent. Accordingly, review petition was filed and the Advance Ruling Authority by order dated 23.10.2014, allowed the review petition and cancelled the clarification dated 14.02.2013, clarifying that the correct rate of tax on sale of primers either by manufacturers or by traders is 5%, irrespective of the fact whether it is sold as industrial inputs or otherwise. Thus, the very basis of the impugned notification itself is no longer existing and the question of proceeding against the petitioner pursuant to the impugned notice is impermissible in law.

Thus, for the above reason, this writ petition is allowed and the impugned notice dated 26.04.2013 is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Commissioner of Commercial Taxes,
   The Authority for Clarification and
     Advance Ruling, Ezhilagam,
   Chepauk, Chennai-600 005.

2. The Assistant Commissioner (CT),
   Namakkal (Town), Namakkal,
   Namakkal District.

+1 CC to The Special Government Pleader(Taxes), Sr 32684.

W.P.No.25510 of 2013

SR(CO)
LS(07/09/2021)