IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.6151 of 2014
and M.P.No.2 of 2014

M/s.Pavizham Spinners Private Ltd.,
Rep. By its Director – M.P.Mohanasundaram,
S.F.No.299/7, Chinnarpalayam,
Tiruchengode Taluk 638 008,
Namakkal District. ...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Department of Commercial Taxes and
Registration Department,
Fort St. George,
Chennai 600 009.

2.The Authority For Clarification and
Advance Ruling, Rep. By its
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.

3.The Assistant Commissioner (CT) (FAC),
Tiruchengode (Rural),
Tiruchengode, Namakkal District. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 2nd respondent in its impugned proceeding in A.C.A.A.R.22/2012-13 dated 14.02.2013 of the 2nd respondent, quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondents : Mr.V.Veluchamy
(Government Advocate)

COMMON ORDER

The proceedings dated 14.02.2013, issued by the 2nd respondent, is sought to be quashed.

2.In the impugned notice in this Writ Petition, the department has proposed to assess sale of Viscose Staple Fibre (VSF) Hank Yarn, stating that the assessee has wrongly claimed exemption under Entry 44 of the Fourth Schedule to the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'TNVAT Act'). The aforesaid issue of exemption of VSF and PFA Hank yarn has now been settled by a Hon'ble Division Bench of this Court in the case of M/s.Aakavi Spinning Mills (P) Ltd., 2A, Pichankadu, B.P. Agraharam (PO), Erode rep. by its Director R.Selvaraj Vs. The Authority for Clarification and Advance Ruling rep. by the Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another, in W.A.No.947 of 2018, whereby, the Hon'ble Division Bench had held that Cotton Hank yarn continuous to be exempted in Entry 44 and so also, VSF and PFA. The relevant portion of the order reads as follows:

> "33. Thus, in the light of the said Budget Speech also, there is nothing specifically mentioned to state that there was any intention to restrict the exemption of Hank yarn only to the cotton hank yarn and not others. Cotton hank yarn as well as other types of yarn in hank form are equally entitled to exemption under Entry 44 and therefore, Handloom Industry stood encouraged by said exemption. Was there any intention of State to harm Powerloom Industry by denying exemption to other types of Yarn sold in Hank form. The answer is an emphatic 'No'. Therefore, we reiterate that firstly, there is no occasion to refer to the external aids like Finance Minister Speech in the present case, in view of the plain language in Entry 44 and even if one were to do so, there is no occasion to make an inference from the said Budget Speech that only cotton Hank yarn was entitled to be exempted. Cotton Hank yarn continues to be exempt in Entry 44 and so also VSF and PFA Hank yarn will be entitled to such exemption. The Court cannot supply or insert the words in the Entries in the statute, as is sought to be canvassed by the Revenue before us."

In view of the aforesaid decision, the proposal in the impugned notice for levy of taxes on sale of VSF Hank yarn cannot be sustained.

3. However, if there are any other issues with regard to proposal of levy tax, it would be appropriate to grant liberty to the assessee to give their reply to the same.

4. In the light of the above observations, the impugned notice, the proposal of levy of sales tax on VSF Hank Yarn, is hereby set aside. The Assessee is at liberty to give their reply to any other issue proposed in the impugned show cause notice, except the issue relating to Cotton Hank yarn, within 30 days from the date of receipt of a copy of this order.

5. The Writ Petition stands disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Commercial Taxes and Registration Department,
Fort St. George,
Chennai 600 009.

2.The Authority For Clarification and Advance Ruling, Rep. By its
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.

3.The Assistant Commissioner (CT) (FAC),
Tiruchengode (Rural),
Tiruchengode, Namakkal District.

+1cc to the Government Pleader Sr.29345

W.P.No.6151 of 2014

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srg 26/07/2021