IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.09.2021

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.22857, 22115, 22116 & 28108 of 2014
and
M.P.Nos.1 & 1 of 2014 in WP Nos.22115 & 22116 of 2014

WP.No.22857 of 2014
1. Maschmeijer Aromatice (India) Pvt. Ltd.,
Rep. By its Managing Director,
S.A.Mohamed Shareef,
P.B.No.3, G.S.T.Road,
Chrompet, Chennai - 600 044. .. Petitioner

Vs

1. The Authority for Clarification
& Advance Ruling,
Ezhilagam Chepauk, Chennai - 600 005.

2. Assistant Commissioner (CT),
Anna Salai I Assessment Circle,
Tambaram, Chennai - 600 045. .. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the files of the 1st respondent herein in ACAAR No.108/2013-14, Acts Cell-II/2074/2014 dt. 12.06.2014, quash the same, while directing the 1st respondent to re-dispose the application for advance ruling filed by the petitioner under Section 48A(1) of the Tamil Nadu Value Added Tax Act, 2006 on 20.01.2014 on merits.

WP.No.22115 of 2014
1. Wheels India Limited,
Rep. By its President-Finance
V,Venkataramanan,
Padi, Chennai - 600 050. .. Petitioner

Vs

1. The Authority for Clarification
& Advance Ruling,
Ezhilagam Chepauk, Chennai - 600 005.

2. Assistant Commissioner (CT),
Anna Salai II Assessment Circle,
'Sire Mansion',
621, Anna Salai, Chennai - 600 006. .. Respondents

PRAYER:

This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the files of the 1st respondent herein in ACAAR No.98/2013-14, Acts Cell-II/625/2014 dt. 16.06.2014, quash the same, while directing the 1st respondent to re-dispose the application for advance ruling filed by the petitioner under Section 48A(1) of the Tamil Nadu Value Added Tax Act, 2006 on 21.01.2014 on merits.

WP.No.22116 of 2014

1. Sundaram Fasteners Limited,
Rep. By its
Chief Financial Officer & Company Secretary,
V.G.Jaganathan,
No.98-A, VII Floor,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004. .. Petitioner

Vs

1. The Authority for Clarification
& Advance Ruling,
Chepauk, Chennai - 600 005.

2. The Deputy Commissioner (CT),
LTU-1, 34, Dugar Towers,
Marshalls Road,
Egmore,
Chennai - 600 008. .. Respondents

PRAYER:

This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the files of the 1st respondent herein in ACAAR No.109/2013-14, Acts Cell-II/2288/2014 dt. 12.06.2014, quash the same, while directing the 1st respondent to re-dispose the application for advance ruling filed by the petitioner under Section 48A(1) of the Tamil Nadu Value Added Tax Act, 2006 on 21.01.2014 on merits.

WP.No.28108 of 2014

Indian Oil Corporation Limited,
Rep. By its Chief Finance Manager,
P.Radhakrishnan,
Indian Oil Bhavan, 139, Mahatma Gandhi Road,
(Nungambakkam High Road),
Chennai - 600 034. .. Petitioner

Vs

1. The Authority for Clarification & Advance Ruling (Commercial Tax Deptt.) Ezhilagam, Chepauk, Chennai - 600 005.

2. The Deputy Commissioner (CT) - IV Large Taxpayers Unit, Egmore, Chennai - 600 008. .. Respondents

PRAYER:

This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the files of the 1st respondent herein in ACAAR No.116/2013-14, Acts Cell-II/5262/2014 dt. 16.06.2014, quash the same, while directing the 1st respondent to re-dispose the application for advance ruling filed by the petitioner under Section 48A(1) of the Tamil Nadu Value Added Tax Act, 2006 on 13.02.2014 and to determine the issues raised by the petitioners in their advance ruling application dated 13.02.2014 on merits.

For Petitioner in all WPs. : Mr.N.Prasad

For Respondents in all WPs. : Mr.V.Veluchamy Government Advocate

C O M M O N O R D E R

All these writ petitions are filed challenging the proceedings of the Authority for Clarification and Advance Ruling.

2. The learned counsel for the petitioners at the first instance brought to the notice of this Court that the issue involved regarding input tax credit is now sub judiced before the Hon'ble Division Bench of this Court in the writ appeal filed by the department. As far as the orders impugned, passed by the Authority for Clarification and Advance Ruling, are

concerned, the very applications itself were rejected on the ground

that they are not maintainable under Section 48-A of the Tamil Nadu Value Added Tax Act. Admittedly, the applications for clarification were filed under Section 48-A(1) of the Tamil Nadu Value Added Tax Act, 2006 read with Rule 12-A of the Tamil Nadu Value Added Tax Rules, 2007.

3. Sub Clause (ii) to sub section 2 of Section 48A unambiguously stipulates that no application shall be entertained where the question raised in the application,- relates to an issue which is designed apparently for avoidance of tax.

4. Pertinently, the language employed in sub-clause (ii) to sub-section 2 of Section 48-A is "an issue which is designed apparently for avoidance of tax". The language 'design' is to be interpreted so as to provide a wider meaning in view of the fact that a person who seeks clarification may plan and coin the clarifications in a particular manner to escape from the bar contemplated under sub-section 2(ii) of Section 48-A of the Act. Thus, in the event of clarification what would be the implication and if any such implication is relatable to avoidance of tax, then it is to be construed that such clarifications are falling under sub section 2(ii) of Section 48-A of the Act.

5. The word specifically employed in sub-clause (ii) to sub-section 2 of Section 48-A is 'design', which also includes the definition 'create plans'. Designing involves probability to create certain plans or ideas and therefore, in such circumstances, the authorities are empowered to cull out the intention and inferences in the application whether such clarification sought for and the clarification if provided would intend to or relatable to avoidance of tax. In all respects, any such clarification or advance ruling sought for by any applicant by designing the clarification or advance ruling in such a manner so as to appear such clarification is not falling within the ambit of avoidance of tax, then authorities are expected to go deeper into the contentions and decide whether it is really intended for avoidance of tax or not. If any such factor is established from and out of any such application, then they are empowered to reject the application under Section 2 (ii) of Section 48A of the Act. There may be numerous circumstances which are to be decided on the basis of fact-to-fact of the case and therefore, this Court is of the considered opinion that the authorities are empowered to consider all these aspects while entertaining an application under Section 48A of the Act.

6. As far as the present writ petitions are concerned, the learned counsel for the petitioners made a submission that though the connected issue is pending before the Hon'ble Division Bench of this Court, they are ready to appear before the Assessing Officer and cooperate for the completion of assessment. It is unnecessary to state that their right of appeal otherwise may be exercised, if they so desire, after completion of any such process. However, this Court is of the considered opinion that the legality of the order impugned in these writ petitions need not be gone into at this stage, as the petitioners themselves have expressed their willingness to go before the Assessing officer, by producing the documents, books of accounts, etc.

7. This being the submissions made on behalf of the petitioners, the petitioners are at liberty to approach the respective jurisdictional Assessing Officer, enabling the authority to scrutinise the documents, book of accounts, etc., and make an assessment by following the procedures as contemplated under the provisions of the Act/rules. It is brought to the notice of this Court that assessment is pending only in respect of the input tax credit and therefore, the said assessment has to be proceeded with and completed as expeditiously as possible.

8. With the above directions, the writ petitions are disposed of. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Authority for Clarification
& Advance Ruling,
Chepauk, Chennai - 600 005.

2. Assistant Commissioner (CT),
Anna Salai I Assessment Circle,
Tambaram, Chennai - 600 045.

3. Assistant Commissioner (CT),
Anna Salai II Assessment Circle,
'Sire Mansion', 621, Anna Salai,
Chennai - 600 006.

4. The Deputy Commissioner (CT),
LTU-1, 34, Dugar Towers,
Marshalls Road, Egmore,
Chennai - 600 008.

5. The Deputy Commissioner (CT) - IV
Large Taxpayers Unit,
Egmore,Chennai - 600 008.

+ 4ccs to Mr.N.Inbarajan, Advocate, S.R.No.45999, 45998, 45995, 45996

+ 1cc to the Special Government Pleader (Taxes), S.R.No.46233, 46234, 46235, 46237.

WP Nos.22857, 22115, 22116
& 28108 of 2014

(2/2)

SRA(CO)
CT/12/10/2021