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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.02.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.1947 of 2017
and
W.M.P.(MD)Nos.1599 & 1600 of 2017

M/s.Foam India,
Rep. by Sampath
No.6/4, Vayalur Main Road,
Uyyakondan Thirumalai,
Trichy-620 102. ... Petitioner

-Vs-

1.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),
Woraiyur Assessment Circle,
Trichirappalli. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the second respondent in his impugned proceedings made in ACAAR No.15/2012-13 Acts Cell-II/3642/2014, dated 02.12.2014 that Polyurethane PU Sheet is considered as industrial input 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 insofar as the petitioner is concerned quash the same.

For Petitioner : Mr.S.Rajasekar
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.The petitioner is a manufacturer of Polyurethane Foam. They had registered themselves with the third respondent. The issue

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arose as regards the rate of taxation for the said commodity. M/s.Kurlon Limited, Chennai is also manufacturing the very same commodity. They approached the Authority for Clarification and Advance Ruling under Section 48(A) of TNVAT Act, 2006 to clarify the rate, at which, it is to be taxed. The application submitted by M/s.Kurlon Limited was taken up as A.C.A.A.R.No.15/2012-13 and vide order dated 25.07.2012, it was ruled that POLY URETHANE FOAM [PU] is an unclassified item and it is taxable at 14.5 % under Entry 69 of Part-C of the First Schedule of TNVAT Act, 2006. The very same ruling was reiterated in A.C.A.A.R 30/2013-14, vide order dated 03.12.2013 at the instance of another manufacturer namely Tvl.Joy Foam Private Limited. Aggrieved by the ruling, Tvl.Indian Polyurethane Association applied for review under Section 48-A (4) of TNVAT Act. The authority disposed of the review proceedings vide order dated 23.10.2014 by issuing the following clarification :

> "The Polyurethane Foam is a plastic product, liable to tax at reduced rate of 5%, as per Entry in SI.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.The authority noted that 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. 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. This fact of reduction in rate as per the aforesaid notification was omitted to be considered by the Advance Ruling Authority while issuing its earlier clarifications dated 25.07.2012 and 03.12.2013.

4.If the matter had raised there, none of the manufacturers would have had any grievance. But the review application filed by M/s.Tvl.Kurlon Limited was taken up and even though vide order dated 02.12.2014, the very same clarification as mentioned above was issued. Para No.8 of the order contain enough potential for causing confusion. The said para reads as under :

> "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

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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.

5.The order dated 02.12.2014 being the latest clarification, the assessing authority began to treat the goods in question as industrial inputs and therefore, insisted on the production of the appropriate certificate. Failure to produce the certificate automatically resulted in attracting rate of tax. That is why, the petitioner herein felt constrained to challenge the order dated 02.12.2014.

6.At the very outset, I indicated to the learned counsel for the petitioner that since the order made in the review application filed by the Tvl.Kurlon Limited has been put to challenge, Tvl.Kurlon Limited ought to have been made a party to the writ proceedings. However, the learned counsel would call upon this Court to adjudicate the issue raised in the writ petition. If the impugned order is set aside, Tvl.Kurlon Limited will have no grievance about it. If the impugned order is sustained, still in as much as Tvl.Kurlon Limited does not appear to have been challenged the matter sofar, they are not going to be put in a worse off position. Therefore, according to the learned counsel for the petitioner, either way this Court can get along with the matter.

7.I find the said submission to be correct. The issue on hand can be disposed of on a short ground. The authority for clarification and advance ruling had given a particular ruling on the issue on 25.07.2012 in A.C.A.A.R 15/2012-13. The very same ruling was reiterated, vide order dated 03.12.2013 in A.C.A.A.R 30/2013-14. At the instance of M/s.Tvl.Indian Polyurethane Association, both the rulings were reviewed in a common proceeding and disposed of on 23.10.2014. It is quite possible that M/s.Kurlon Limited is a member of the M/s.Tvl.Indian Polyurethane Association. Be that as it may, when once ruling in A.C.A.A.R.No.15/2012-13 was reviewed on 23.10.2014, the second review would obviously not lie. This is clear from the bare reading of Section 48-A(4) of TNVAT Act, 2006. The said provision reads as follows:-

> “**48-A Clarification and Advance Ruling:-**
>
> (4)The Authority shall have power to review, amend or revoke its clarification or advance ruling at any time for good and sufficient cause after giving an opportunity of being heard to the affected parties.”

8.It is well settled that there is no inherent power of review. The power of review will have to be specifically conferred. Once it is conferred, the jurisdiction to review cannot transcend its scope. The aforesaid provision authorizes the authority to review or amend or recall its clarification and advance ruling, at any time for good and sufficient cause after giving an opportunity of being heard to the affected parties. It means that the review

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application will lie in respect of clarification and advance ruling given under Section 48-A(1) of the Act. There is no power to review what has been rendered under Section 48-A(4). It is useful to refer to Order 47 of Civil Procedure Code in this regard where there is a specific bar against review of a review. The very same principle can be inferred from the language of Section 48-A(4) also. Looked at from this perspective, the impugned order dated 02.12.2014 is patently lacking in jurisdiction. It is accordingly quashed.

9.The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are quashed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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