(2014) 10 MAD CK 0042

In the Madras High Court

Case No : W.P. Nos. 10446 to 10451 of 2014

Elgi Equipments Ltd.	APPELLANT
Vs	
Deputy Commissioner (CT), Fast Track Assessment Circle-I	RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 2(11)

Citation : (2015) 77 VST 223

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : R.L. Ramani, Senior Counsel for B. Raveendran, Advocates for the Appellant; A.R. Jayaprathap, Government Advocate, Advocates for the Respondent

Judgement

T.S. Sivagnanam, J.—By consent of the learned counsel on either side, these writ petitions are taken up for final disposal. Heard Mr. R.L. Ramani, learned senior counsel for Mr. B. Raveendran, learned counsel appearing for the petitioner and Mr. A.R. Jayaprathap, learned Government Advocate for the respondent.

2. The petitioner has filed these writ petitions, challenging the orders of assessment dated March 12, 2014 and March 13, 2014, respectively, for the assessment years 2006-07 to 2011-12.

3. The short ground on which the impugned orders have been challenged is by contending that the goods manufactured by the petitioner, namely, air compressors being capital goods were entitled to concessional rate of tax at four per cent. The assessing officer, while granting the said concessional rate of tax, denied the same in respect of the sale effected by the petitioner through its distributors, which is according to the petitioner is erroneous, since the goods are continued to be used as capital goods by the end-user. The petitioner would further state that it had produced the records before the assessing officer at the time of personal hearing in respect of the goods, which were sold, to establish its contentions that the air compressors manufactured by the petitioner and used by

the end-user were meant for use as capital goods. Despite production of such records, the respondent mechanically rejected the contentions of the petitioner and confirmed the proposal.

4. Other ground on which the impugned order has been challenged is with regard to reversal of input-tax credit for the assessment year 2011-12 alone on the ground that C declaration forms were produced at the time of assessment. The petitioner''s case is that at the time when the assessment was finalized, the assessment under CST is yet to be finalized. Therefore, C declaration forms could not be produced, but it is now available with the petitioner and if an opportunity is granted, the petitioner would be able to produce the same.

5. With regard to the ground on which the concessional rate of tax was denied to the petitioner in respect of the sale effected through its distributors, learned senior counsel for the petitioner has drawn the attention of this court to the decision of the Authority for Clarification and Advanced Ruling dated June 24, 2014 and July 10, 2014. In the clarification dated July 10, 2014, the applicant was the registered dealer in lathe machinery, spares, components and accessories and electric motors manufacturing industrial sewing machine motors, what would be the rate of tax.

6. The Advanced Ruling Authority, after considering the matter passed an order on July 10, 2014. The operative portion of the order reads as under:

"6.2 . . . The intention of having entry 25 of Part B of the First Schedule to the Act is to provide the concession regarding rate of tax for the goods bearing eligibility to be the capital goods for manufacturing industry. Therefore, the industry specific machineries, the spare parts, components and accessories of such machineries having ultimate use only in industry either for installation as a wholesome machinery or for the post-installation maintenance and repairs, on supply to the industrial manufacturers of other goods, either directly by manufacturers of such machineries or such spare parts, components and accessories or through their supply chain, i.e., through their distributors or dealers, would attract the same rate of five per cent, by virtue of entry 25 of Part B of the First Schedule to the Act. Just because of having sold by the manufacturers of machinery and its spares, components and accessories to their buyers being the dealers in such lines for further distribution to the industry, would not alter the legal position and subject these goods for levy at the higher rate of 14.5 per cent, construing that these goods would fall under the residual entry 69 of Part C of the First Schedule to the Act."

7. In terms of the above ruling, it has been held that just because of having sold by the manufacturers of machinery and its spares, components and accessories to their buyers being the dealers in such lines for further distribution to the industry, would not alter the legal position and subject these goods for levy at the higher rate of 14.5 per cent. In respect of the identical products as manufactured by the petitioner, namely, industrial air compressors, an

application was filed by M/s. Schumak Equipments India Pvt. Ltd., who are manufacturers of industrial air compressors and they sought for clarification as regards the rate of tax for industrial air compressors.

8. The Advanced Ruling Authority, by order dated June 24, 2014, clarified that industrial air compressors are liable to tax at five per cent, as capital goods within the meaning and scope of entry 25 of Part B of the First Schedule read with section 2(11) of the TNVAT Act, 2006. In the light of the subsequent development, this court is of the view that the assessing officer should take note of the clarification issued by the Advanced Ruling Authority. So far as the rate of tax is concerned, the order of the Advanced Ruling Authority dated June 24, 2014 would be prima facie applicable. Insofar as whether higher rate of tax could be levied, merely because machinery, spares, parts components are supplied through their distributors or dealers, whether it would attract higher rate of tax were considered by the Advanced Ruling Authority in its order dated July 10, 2014. But the legal principles could very well be applied to the case of the petitioner, since part of the sales were effected through their distributors. However, learned senior counsel for the petitioner has pointed out that the assessment under the provisions of CST Act has been completed and the petitioner has requisite C declaration forms and is ready to produce the same before the authority in respect of the assessment year 2011-12. In the result, all these writ petitions are allowed. The impugned proceedings are quashed and the matter is remanded back to the respondent for fresh consideration. The respondent shall afford an opportunity of personal hearing to the petitioner by issuing notice on which date the petitioner through its authorized representative shall appear and produce all records, including the decision taken by the Advanced Ruling Authority referred supra and the respondent, after considering the same, shall pass fresh orders in accordance with law within a period of eight weeks from the date of conclusion of personal hearing. No costs. Consequently, connected miscellaneous petitions are closed.