IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **02.09.2016**

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.30796 to 30803 of 2016
& W.M.P.Nos.26693 to 26700 of 2016

W.P.No.30796 of 2016:

1 M/s.Arokiya Foods
Rep by its Proprietor
No.81-A Azhagapurai Nagar
Vellakovil- 638 111 .. Petitioner

Vs.

1 The Commissioner of Commercial Taxes
Ezhilagam, Chepuak
Chennai-600 005.

2 Assistant Commissioner (CT)
Kangayam Assessment Circle
Kangayam
Tiruppur District .. Respondents

Prayer in W.P.No.30796 of 2016: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari to call for the records of the respondent for the proceedings in TIN No.33293083174/ 2014-15 dated 27.07.2016 and to quash the levy of sales tax by the second respondent based on the circular issued by the Commissioner of Commercial Taxes in ACAAR II/ 2013-14 dated 02.12.2013 (Acts Cell. II/ 13137/ 2013) by levying tax for the sale of idli and Dosai Maavu (Batter) Sold by the petitioner which are perishable goods.

For Petitioner : Mr.C.B.Baktha Siromoni
For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON ORDER

Heard Mr.C.Baktha Siromoni, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who accepts notice on behalf of the respondents and with the consent of either side, the writ petitions are taken up for disposal.

2. The petitioner, who is a Registered dealer on the file of the second respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act), has filed these writ petitions questioning the orders of assessment for the years 2014-15 and 2013-14, 2016-17, 2015-16, 2012-13, 2010-11, 2011-12 and 2009-10, respectively.

3. The main ground of challenge of the impugned orders is by contending that the assessing authority erroneously completed the assessments solely placing reliance on the Advance Ruling, given by the Authority for Clarification and Advance Ruling, by proceedings dated 2.12.2013. Such ruling has been obtained by M/s.Vijay Homes Foods (P) Limited, Trichy, in which, the authority has stated that 'Idli Wet Maavu (batter), Dosai Wet Maavu (batter), Vada wet Maavu

(batter), Addai Wet Maavu (Batter) sold in loose condition (without any container/brand) are taxable at 5% under Entry 51 of Part-B of the First Schedule'.

4. The learned counsel for the petitioner would contend that though the petitioner gave a detailed objection, in a single line the second respondent has rejected the said objections. Further, it is stated that the Hon'ble Division Bench of this Court, in the case of **Pizzeria Fast Foods Restaurant (Madras) Pvt.Ltd., vs. Commissioner of Commercial Taxes, Chennai and Others [(2005) 140 STC 97(Mad)]** has held that the Commissioner of Commercial Taxes has no power to issue Clarification with regard to rate of tax. Further, the Division Bench in the case of **Texx One Private Ltd., vs. Principal Commissioner and Commissioner of Commercial Taxes, Chepauk, Chennai and another [2012] 52 VST 377 (Mad)]** has held that the Circular issued by the Commissioner of Commercial Taxes has no legal authority. Therefore, it is contended that the Clarification issued by the Commissioner, dated 2.12.2013, is against the decisions of the Division Bench of this Court.

5. Though such a contention has been raised, the proceedings, dated 2.12.2013, is not a Clarification issued by the Commissioner nor a Circular, but it is a proceedings of the Authority for Clarification and Advance Ruling, exercising power under Section 48-A of the TNVAT Act, 2006. Therefore, if the product is of the same nature, then obviously the assessing officer will apply the Advance Ruling. If according to the petitioner, the product manufactured by them is slightly different and the Advance Ruling is not applicable, then they have to file a revision petition before the concerned authority, in terms of Section 48-A(4) of the TNVAT Act, 2006. The Advance Ruling Authority has 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. Therefore, if the petitioner's case is that the Clarification would not apply to their case, or if it is erroneous, then, they have to approach the authority by seeking for review of the orders.

6. In the light of the above, the petitioner is directed to file a petition to review the Clarification, dated 2.12.2013, in A.C.A.A.R 11/2013-14, before the authority for Clarification and Advance Ruling, within a period of two weeks from the date of receipt of a copy of this

order. Along with the petition, the petitioner should produce necessary proof to show as to how the Clarification would not be applicable to them, vis-a-vis, the products manufactured by them. On such petition being filed, the authority shall consider the same and pass appropriate orders on merits and in accordance with law, after notice to the petitioner and their assessing officer. This direction shall be complied with within a period of four weeks from the date on which the review petition is filed. Till orders are passed by the Advance Ruling Authority, in terms of the above direction, further proceedings, pursuant to the impugned assessment orders, shall be kept in abeyance.

7. The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

02.09.2016

msk

Internet:Yes

Index:Yes/no

To

1 The Commissioner of Commercial Taxes
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Chennai-600 005.

2 Assistant Commissioner (CT)
Kangayam Assessment Circle
Kangayam Tiruppur District

T.S.SIVAGNANAM , J.

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