

**(2009) 11 MAD CK 0213**

**Madras High Court**

**Case No:** Writ Petition No. 16434 of 2009 and M.P. No. 1 of 2009

Lloyd Insulations (India) Limited

APPELLANT

Vs

Joint Commissioner (CT) (Central  
Division) and Others

RESPONDENT

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**Date of Decision:** Nov. 24, 2009

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Tamil Nadu General Sales Tax Act, 1959 - Section 28A

**Citation:** (2010) 35 VST 103

**Hon'ble Judges:** Chitra Venkataraman, J

**Bench:** Single Bench

**Advocate:** P. Rajkumar, for the Appellant; R. Mahadevan, Additional Government Pleader,  
for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Chitra Venkataraman, J.

The Petitioner has sought for issuance of a writ of certiorarified mandamus to quash the proceedings of the first Respondent dated March 6, 2009 and to consequently direct the Respondents to classify the thermal insulation panel and rock wool/PU foam sandwiched panel manufactured and sold by the Petitioner under entry No. 69 of Part B of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006 as the determination to the contrary by the first Respondent is ultra vires the provisions of the said Act.

2. The Petitioner approached the Commissioner for clarification by stating that the product manufactured by him is a product assessable under entry No. 69 of Part B of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006 taxable at four per cent. Since there are three clarifications as to the said entry and the product manufactured by the Petitioner is a new product, to verify as to whether it would fall

under item No. 69, Part B, the Petitioner sought for clarification by filing an application dated November 24, 2008 before the second Respondent. However the second Respondent forwarded the request of the Petitioner to the first Respondent who clarified in his proceeding dated March 6, 2009 that the PU roofing panels, PU wall panels and PU ceiling panels used as parts and accessories of cold storage/freezing point shall fall under the residuary category under Part C of the First Schedule taxable at 12.5 per cent. Aggrieved by the same, the Petitioner has moved this Court by filing this writ petition.

3. The Petitioner contends that even in the absence of the provisions similar to Section 28A of the Tamil Nadu General Sales Tax Act, after the introduction of Tamil Nadu Value Added Tax Act, in order to remove the difficulties in the provisions under the Tamil Nadu Value Added Tax Act, the second Respondent has issued more than 1500 clarifications and the same have been released in the State Government websites and also in the various journals publishing sales tax decisions. The Petitioner's grievance is that instead of issuing a clarification, the second Respondent has forwarded the application to the first Respondent, who had passed the clarification without granting opportunity to the Petitioner.

4. The Petitioner contends that the clarification by the first Respondent is not a statutory clarification. Being a proceeding from a superior officer, the same would be binding on the assessing officer and hence, if an assessment is to be passed by the assessing officer on the lines expressed by the first Respondent, the Petitioner's interest would be seriously prejudiced. Hence, the clarification is ultra vires the provisions of the Act and consequently, the Petitioner seeks a direction to the second Respondent to classify the product as assessable under entry No. 69, Part B of the First Schedule.

5. I do not agree with the submission of the Petitioner. As already seen and admitted by the Petitioner itself, the Act contains no provision conferring either on the second Respondent or on the first Respondent by delegation, an authority to give clarification. Yet, conscious of the total absence of power, for reasons best known to the Petitioner, it invited the clarification by presenting an application, which the Respondents readily gave too. However, when the clarification went against the expectations of the Petitioner and on lines different from what the Petitioner willed, the present contentions are made that the clarification is ultra vires the provisions of the Act that the authority be directed to classify the product as assessable under entry 69 of Part B of the First Schedule to the Act. The jurisdiction to issue a clarification is, pure and simple, a statutory power and the availability of a jurisdiction is not dependent on the relief that an applicant may wish. The contention of the Petitioner only gives the impression that what otherwise would not have been legally possible would be a permissible one in the eyes of the Petitioner, had the clarification gone in favour of the Petitioner. With a plea that the proceedings of the first Respondent dated March 6, 2009 are ultra vires the

provisions of the Act and that there is no provision to confer authority on the Respondents under the Act to give clarification, I fail to understand the logic of the Petitioner calling upon this Court to direct the Respondents to give the clarification in the manner in which it seeks. In other words, all that the Petitioner wants is a mandamus to be issued to the Respondents to endorse their approval to the classification made by the Petitioner. The jurisdiction of this Court under Article 226 of the Constitution of India to issue a mandamus arises only if and when the statutory authority has the obligation to do a particular thing under the Act and that the authority fails to perform its statutory function.

6. The learned Counsel for the Petitioner placed reliance on the decision in W. P. No. 3526 of 2008 dated September 4, 2008, wherein this Court had passed an order holding that the impugned clarification issued is without jurisdiction and the same has to be quashed. This Court further held that this Court had not expressed any opinion regarding the merits of the clarification, as the same is a subject-matter to be assessed by the assessing authorities. By no stretch of any legal principle the prayer of the Petitioner could fall within the scope of Article 226 of the Constitution of India.

7. I agree with the view expressed by this Court holding that the clarification issued is without jurisdiction. Given the admitted fact that there is no legal authority on the Respondents to issue the clarification and there being no statutory provisions to that effect, it being non est in the eye of law, I do not find any justification in the prayer seeking the quashing of the clarification as ultra vires the provisions of the Act. I can only say that the clarification, whether it is in favour of the Department or the Assessee can have no effect at all to have any binding effect on the assessing authority in the assessment proceedings. Consequently, the Assessing Authority has to assess the claim of the Assessee independently on the basis of the materials produced before him. The petition seeking clarification and the clarification given by the first Respondent have no legal sanction hence, are of little significance and consequence as far as the assessment proceedings are concerned. Having regard to the above, I do not find there exists any ground to grant the prayer in the writ petition by way of quashing the same and to hold that the item in question had to be assessed under a particular head. In these circumstances, the assessing authority is directed to consider the claim of the Assessee as to the taxability of the item on the basis of the materials placed by the Assessee independently uninfluenced by the circular issued by the first Respondent which is not backed by any authority of law.

8. The writ petition is disposed of accordingly. No costs. Consequently, connected M. P. is closed.