IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.3.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.4886 to 4891 of 2015
and MP.Nos. 1 to 1 of 2015

WP.No.4886 of 2015

Heinz India Private Limited
Represented by its Deputy Manager
Branch Commercial
M.Kumar,
3-A and 3-B, Century Plaza
Anna Salai, Chennai - 600 018 ... Petitioner in 4887

Vs.

The Assistant Commissioner (CT)
T.Nagar Assessment Circle
46, Pasumpon Muthuramalingam Maligai
R.A.Puram, Chennai - 600 028 ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified Mandamus, calling for the records on the files of the Respondent herein in TIN: 33880960829/2009-10, 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15 respectively dated 05.02.2015 quashing the same while directing the Respondent herein to pass fresh orders in the light of the principles laid down by the learned Division Bench of this Honourable Court reported in 79 STC 421 (SC) (State of Tamil Nadu vs. Wander Limited) and as confirmed by the Honourable Supreme Court in S.L.P. (Civil) Nos. 15973 & 15974/1991.

For Petitioner in all petitions : Mr.C.Natarajan for Mr.N.Inbaarajan

For Respondent in all petitions : Mr.V.Haribabu, Additional Government Pleader

O R D E R

The above writ petitions have been filed challenging the impugned orders dated 05.2.2015 in respect of the assessment years 2009-2010; 2010-2011; 2011-2012; 2012-2013; 2013-2014; and 2014-2015 respectively.

2. The petitioner Company is engaged in the manufacture and sale of diary products. According to the petitioner, the impugned orders suffer from abdication and surrender of quasi-judicial power to a higher authority in being found exercised as if bound by the circular dated 25.01.2008. According to him, the impugned orders which hold that product 'Complan' is not milk product under Entry 82 of Part B of the First Schedule is in disregard of the tests laid down by the learned Division Bench of this Court in a Judgment reported in 79 STC 421 (State of Tamil Nadu v. Wander Limited). According to the petitioner, in the said judgment this Court held that 'any product in which milk predominates, will be 'milk food' and the said judgment has been upheld by the Hon`ble Supreme Court by an order dated 23.8.1993 in SLP(Civil) Nos.15973 and 15974 of 1991. The impugned proceedings examine whether the goods are 'milk products' entirely neglecting to consider the expression ' milk food' occurring in the entry, just because the Commissioner also committed the same error.

3. The petitioner also drew the attention of this Court to the unreported judgment of this Court in WP.No.5115 of 2008 dated 22.12.2014 (GLAXOSMITHKLINE CONSUMER HEALTHCARE LIMITED VS. THE COMMISSIONER OF COMMERCIAL TAXES), and contended that this Court reiterated the test of predominance of milk in terms of weight and value as the criteria for purpose of Entry 82 of Part B of the First Schedule to the TNVAT Act, 2006, while quashing a similar clarification on the classification of 'milk food'.

4. According to the petitioner, 'Complan' is manufactured with dairy milk as the input comprising of milk solids in excess of 50% apart from added Malt extract etc., If the milk in volume was taken into account for the preparation of 'Complan', it constitutes above 90%. There is no definition of the expression 'milk food' or 'milk product' under the Act. The petitioners had charged only the lessor rate under Sl.No.82 of Part B to the customers and filed returns in Form I and deemed assessments were completed under Section 22 (2) of the Act. Therefore, according to the petitioner, the impugned orders are not sustainable in law in view of the earlier judgment of this Court as well as the judgment of the Hon`ble Supreme Court.

5. It is the Submission of the learned counsel for the petitioner that impugned orders are completely vitiated since the notice of revision dated 26.12.2014 indicates mere change of opinion and does not furnish any reason as contemplated under law. It is also the submission of the learned counsel for the petitioner that the impugned order is ex-facie contrary to the judgment of

the Division Bench of this Court in STATE OF TAMIL NADU V. WANDER LIMITED (79 STC 421), which has also been upheld by the Hon`ble Supreme Court in S.L.P.(Civil) No.1593 and 15974 of 1991. The learned counsel also contended that in similar issue, in the case of GLAXO SMITHKLINE CONSUMER HEALTHCARE LTD., (WP.No.1551 of 2008), this Court, while quashing the clarification dated 25.1.2009 of the Commissioner of Commercial Taxes, remitted the matter to authority for fresh consideration stating that as per Entry 82 of Part B to the first Schedule, the predominance of milk in terms of weight and cost are the relevant test.

6. I have heard the learned Additional Government Pleader appearing on behalf of the respondent on the submission made by the learned counsel for the petitioner.

7. It is the case of the petitioner that expression 'milk food' was not at all examined by the respondent while passing the impugned orders. According to the petitioner, the sale of 'Complan' fall under Sl.No.82 of Part B of the First Schedule to the TNVAT ACT, 2006. It is useful to extract Entry 82 of Part B of the First Schedule to the VAT ACT:-

Sl.No.	Description of goods	Commodity Code	Rate
82	Milk Food and milk products (including Flavoured milk, skimmed milk powder, Tinned, bottled or packed) Baby milk food, paneer, milk powder and UHT milk	2082	4% until 11.7.2011 and at 5% threafter

8. To substantiate his contention, the learned counsel for the petitioner relied on the decision of the Division Bench of this Court in STATE OF TAMIL NADU V. WANDER LIMITED (79 STC 421), as upheld by the Hon`ble Supreme Court in S.L.P. (Civil) No.15973 and 15974 of 1991, wherein this Court has observed as follows:-

> “We think that the most reasonable way of understanding the item is to hold that a product which is made predominantly out of milk should be treated as milk food”.

9. It is also brought to the notice of this Court in identical issue, this Court in GLAXO SMITHKLINE CONSUMER HEALTHCARE LTD., (WP.No.1551 of 2008), while quashing the similar

clarification dated 25.1.2009 of the Commissioner of Commercial Taxes, has remitted the matter to authority for fresh consideration.

10. It is the contention of the respondent that the petitioner has preferred appeals with regard to the earlier assessment years and the matter is subjudice before the Tribunal. According to the learned Additional Government Pleader, without exhausting the alternative remedy available, the petitioner has approached this Court. According to him, similar issue in respect of in previous assessment years is pending before the Tribunal and the objections raised by the petitioner herein are also similar in nature and therefore, by way of these writ petitions, the petitioner is trying to evade the proceedings pending before the Tribunal.

11. Admittedly, the authority, without considering the objections, has passed an order simply extracting the objections in respect of the previous assessment years. However, there was no stay granted with regard to the same and, therefore, the said contention raised by the petitioner with regard to the previous assessment years cannot be entertained in these writ petitions.

12. In these cases, admittedly, the objections raised by the petitioner have not been gone into by the authority in the light of the judgment of this Court as well as the judgment of the Hon`ble Supreme Court cited supra. Only on the sole ground, the matters require interference of this Court even though the petitioner has got alternative remedy.

13. In the light of the same, without going into the merits of the contentions raised by both sides, I am inclined to remit the matters to the authority for fresh consideration. Accordingly, the impugned orders are set aside and the matters are remitted to the authority concerned for fresh consideration. The petitioner is directed to deposit 10% of the amount demanded by the respondent in respect of each assessment years before the authority concerned, without prejudice to his right, on or before 30.4.2015. Out of the said 10% of the amount, one crore in each assessment years shall be paid on or before 31.3.2015 and the remaining amount shall be paid on or before 30.4.2015. The petitioner is also directed to appear in person before the authority concerned along with objections and documents, if any, on 04.5.2015 and on such appearance the respondent shall pass orders, after hearing in person, on merits and in accordance with law, without taking note of the above narrations made by this Court. It is also made clear that the

respondent shall pass orders independently based on the objections to be put forth by the petitioner.

14. It is needless to state that the petitioner will not be issued any fresh show cause notices. If the petitioner fails to appear before the authority on 04.5.2015 and to pay the amount as stated supra, the impugned orders shall stand restored.

15. The writ petitions are disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT)
T.Nagar Assessment Circle
46, Pasumpon Muthuramalingam Maligai
R.A.Puram, Chennai - 600 028

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.15513
+1cc to the Special Government Pleader(Taxes), S.R.No.15807

W.P.Nos.4886 to 4891 of 2015
and connected Miscellaneous Petitions

KK(CO)
CA(07/04/2015)