IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:27.11.2017
CORAM
THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
Writ Petition No.12363 of 2006
&
W.M.P.No.13968 of 2006

AB Mauri India Pvt. Ltd.,
(Formerly Burns Philip India Pvt. Ltd.,)
2/15, Ganapathy Colony
Teynampet, Chennai-18
rep by its Director ... Petitioner

vs

1.The Commissioner of Commercial Taxes
Commercial Taxes and
Religious Endowments Dept.
Ezhilagam, Chepauk
Chennai

2.The Commercial Tax Officer
Mandaiveli Assessment Circle
Chennai ... Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarif to call for the records of the first respondent in D.Dis.Acts/Cell-II/34219/2002 dated 01.08.02 clarification No.211/02 and quash the same.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.K.Govi Ganesan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents.

2.The petitioner, who is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and Central Sales Tax Act, 1956, is aggrieved by a clarification issued by the first respondent dated 01.08.2002.

3. The petitioner is engaged in the business of selling yeast, bread improver, bakery products, puff, poultry feed, Pan edible oil (cake gel made of vegetable oil) and has been paying taxes. It appears that the petitioner was directed to approach the Commissioner to get clarification regarding the rate of taxes for the various products dealt with by the petitioner and accordingly made an application before the first respondent on 13.05.2002. The petitioner explained the manufacturing process and ingredients of various products dealt by them. In this writ petition, the product which is involved is cake gel. The petitioner had been paying tax at the rate of 4% by classifying the product under Entry 68 Part B of the first schedule to the TNGST Act. Though the petitioner stated to have submitted substantial materials to show that the product Cake Gel is made out of Vegetable oil and their chemical composition is a combination of Propylene Glycol, glycerin and demineralized water with appropriate proportion, the respondent has, by the impugned clarification, held that the product is taxable at 12% under residuary entry No.40 in Part-D of the first schedule to the Act.

4. The first ground on which the impugned clarification has been challenged is by contending that the first respondent has not given any reason and in the routine manner, issued the clarification without giving an opportunity to the petitioner to establish the facts. Prior to approaching this Court, the petitioner had made a representation to the first respondent to reconsider the matter vide application dated 17.08.2003 stating that the product Cake gel is a Pan edible oil product and it is classifiable under Entry 68 Part B of first schedule to the Act and the appropriate rate of tax is 4% and not 12% as clarified. The product can be specifically brought under Entry 68 and therefore, the residuary entry under Entry 40 Part D should not be allowed. In the said representation dated 17.08.2003, the petitioner prayed for opportunity of personal hearing also. However, the first respondent did not consider the representation and in the meantime, the second respondent has revised the assessment and passed an order on 23.03.2005, which prompted the petitioner to approach this Court and file this writ petition in the year 2006. Though the petitioner had approached the first respondent for clarification, the Authority should specifically state as to why the petitioner's product should be classified under Entry 49 in Part D of first schedule to the Act, when according to the petitioner, the product is a vegetable oil consisting of admixture of other substances and through a process that is being used for human consumption. The general rule pertaining to classification of a product is to see as to whether the product will fall under any of the specific entry, which specifically prescribe a product and when the product does not fall under any of the specific entry, the

Authority would be justified in classifying the product under the residual or general entry. However, this Court is unable to come to a conclusion as to what passed in the minds of the first respondent to classify the product under the residual entry, since the impugned clarification is a non-speaking order. This is sufficient to hold that the impugned clarification is unsustainable.

For the above reasons, the writ petition is allowed and the impugned order dated 01.08.02 is set aside. Consequently, the revision of assessment made pursuant to the impugned clarification is also set aside. However, it is open to the respondents to proceed in accordance with law after due opportunity to the petitioner. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Commissioner of Commercial Taxes
Commercial Taxes and
Religious Endowments Dept.
Ezhilagam, Chepauk
Chennai

2.The Commercial Tax Officer
Mandaiveli Assessment Circle
Chennai

+1cc to the special Government Pleader SR.No.84609
+1cc to Mr.Govi Ganesan, Advocate SR.No.84149

sm:26.12.2017

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