IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2017

Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No.35785 of 2004 &
W.M.P.No.43072 of 2004

M/s. Indo Stainless Fabtech (P) Ltd.,
No.439, SIDCO Industrial Estate,
Chennai. ...Petitioner

Vs.

The Deputy Commercial Tax Officer,
Villivakkam Assessment Circle,
Chennai. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ Certiorari to call for the impugned proceedings of the respondent in CST :693036/2000-2001, dated 31.12.2003 under the Central Sales Tax Act, 1956 and quash the same.

For Petitioner : Ms.Lakshmi Sriram
For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Ms.Lakshmi Sriram, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate for the respondent.

2. The petitioner is aggrieved by the portion of the impugned order, levying tax at the rate of 20% treating the product manufactured and supplied by the petitioner as ''Bulk Milk Cooker', falling under Entry 3 Part G of the first schedule.

3. The petitioner's contention is that, they are only the stainless steel containers, and levying tax at the rate of 20% is not tenable. This being a factual issue, the petitioner should agitate the same before the Appellate Authority. However, at the time, when the Writ Petition was filed, it appears that the period of limitation in filing the Appeal was over. The fact remains that the Writ Petition has been pending since 2004, and there is an order of interim stay granted on 09.12.2004 subject to the condition that the entire tax amount,

as demanded by the respondent, has to be paid. The learned counsel appearing for the petitioner would submit that the interim order has been complied with. Therefore, this Court is inclined to grant liberty to the petitioner to prefer Appeal against the impugned order.

4. Accordingly, this Writ Petition is disposed of, by directing the petitioner to file Appeal before the Appellate Authority within a period of 30 days from the date of receipt of a copy of this order, and if the same is filed, the Appellate Authority shall entertain the Appeal without rejecting it on the ground of limitation. Since entire tax has been paid by the petitioner pursuant to the interim order granted by the Court, the question of insisting upon any pre-deposit by the Appellate Authority does not arise and the Appeal shall be disposed of on merits and in accordance with law. Consequently, connected Miscellaneous Petition is closed. No Costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sd/jer

To
The Deputy Commercial Tax Officer,
Villivakkam Assessment Circle,
Chennai.

+ 1 cc to Mr. Lakshmi Sriram, Advocate SR.50885

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