IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6409 of 2017
and W.M.P.No.6911 of 2017

M/s.Higrive Water System
Rep. by Proprietrix Smt. T.Punidhavathi
No.128, Shanthi Nagar, 1st Street
Chrompet, Chennai. .. Petitioner

Versus

The Commercial Tax Officer
Chrompet Assessment Circle
No.117, Station Road
Radha Nagar, Chrompet
Chennai - 44. .. Respondent

The Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records on the file of the respondent proceedings in CST/1127103/2014-15, dated 23.01.2017 and quash the same being invalid and violated the principles of natural justice and also without authority of law.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.M.Hariharan
Additional Government Pleader

ORDER

Heard Mr.D.Vijayakumar, learned counsel appearing for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondent.

2. The petitioner is before this Court for the second time concerning the very same assessment order viz., 2014-15 under the provisions of the Central Sales Tax Act, 1956 (CST Act). Earlier, the petitioner approached this Court and filed W.P.27210 of 2016, challenging the assessment order dated 15.06.2016, on the ground that there has been violation of principles of natural justice. The Court, recorded the

submissions made on behalf of the petitioner that the petitioner is ready and willing to pay 25% of the disputed tax, directed the petitioner to do so and granted liberty to the petitioner to file objections by treating the assessment order dated 15.06.2016 as a show-cause notice, pursuant to which, the petitioner has filed their objections and the matter is now culminated in the impugned assessment order.

3. Two issues arise for consideration, one with regard to the classification of the product, which according to the petitioner has been exported and what is the rate of duty payable on such product. Second is whether the petitioner is entitled to grant of exemption on the product, as it has been exported. So far as the first issue is concerned, the respondent has treated the Water Purification Plant as "'Machinery" under Entry No.69 of Part C of First Schedule to the TNVAT Act. According to the petitioner, the equipment would fall under Entry No.104 of part B of the First schedule and without applying the exemption, the rate of tax will be only 5%. With regard to the second aspect is concerned, the petitioner's case is that the actual exporter M/s.Orange Aqua Poly Products Pvt. Limited, have not issued Form-H to them and therefore, the petitioner has issued a legal notice to the said company. In any event, Form-H has to be signed by the exporter giving registration number of the exporter under the provisions of the CST Act. Thus, it appears that it is mandatory for the person claiming exemption to produce Form-H declaration.

4. Though the petitioner had given an elaborate reply and also referred to the proceedings of the Authority for Clarification Advance Ruling dated 04.09.2014, in ACAAR No.84/2013-14, the respondent has not given any reasons as to why the clarification cannot be accepted and why it has to be treated as Machinery under Entry No.69 of Part C. The respondent, if seeks to distinguish the product manufactured by the petitioner to be different from what was dealt with by the Advance Ruling Authorities, an exercise has to be conducted by the Officer by examining products, groceries, etc and then come to a conclusion and therefore, I am satisfied that the manner in which the respondent had determined the classification of the product is incorrect. So far as the claim of exemption is concerned, the petitioner has to produce Form-H mandatorily and without the same, the benefit of exemption cannot be granted.

5. Thus for the above reasons, this writ petition is allowed, the impugned order is set aside and the matter is remitted to the respondent for fresh consideration. The respondent shall afford an opportunity of personal hearing to the petitioner, examine the nature of equipment, which was manufactured by the petitioner, the procedure and the technical details and after afford an effective opportunity, determine the

classification issue. With regard to the plea of exemption is concerned, if the petitioner produces Form-H declaration, the same shall be considered. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To
The Commercial Tax Officer
Chrompet Assessment Circle
No.117, Station Road
Radha Nagar, Chrompet
Chennai - 44.

+1cc to Mr.D.Vijayakumar, Advocate sr.no.46872
+1cc to Special Government Pleader(Taxes), sr.no.47700

W.P.No.6409 of 2017

nr 01/08/2018