In the High Court of Judicature at Madras

Dated : 06.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.13506 of 2018 & WMP.No.15907 of 2018

Tvl.Ultramax Hydrojet Private Ltd.,
rep.by its Director, Chennai-44. ...Petitioner

Vs

The Assistant Commissioner (ST),
Chrompet Assessment Circle,
Station No.117, Station Road,
Radha Nagar, Chennai-44. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in the assessment order dated 07.5.2018 in CST.No.890951/2015-16 and quash the same in so far as demand in Ground No.2 is concerned.

For Petitioner : Mr.Adithya Reddy
For Respondent : Mr.M.Hariharan, AGP

ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. In view of the limited nature of the issue involved, the writ petition itself is taken up for final disposal, for which course, the learned counsel on either side are agreeable.

2. In this writ petition, the petitioner has challenged the assessment order dated 07.5.2018 passed under the provisions of the Central Sales Tax Act, 1956 for the year 2015-16 pertaining to inter-state sales by levying tax at 14.5%.

3. The case of the petitioner is that the percentage of such inter-state sales is liable to be fixed only 5%, since it involves equipment, which is classifiable under Commodity Code 2025. Initially, the respondent issued the notice dated 23.3.2018. However, the respondent did not specifically state as to why he proposed to levy tax at 14.5%. It appears that the petitioner orally sought for information as to how the respondent proposed to levy tax at 14.5%. Thereafter, the respondent issued the revised notice dated 23.4.2018, in which,

the respondent stated that the equipment is classifiable under Commodity Code 301, which is a residuary entry and not under Commodity Code 2025.

4. Though the petitioner was in the process of submitting their objections along with supportive materials, the respondent gave the petitioner only seven days time and the petitioner states that they were unable to submit their objections within time, which resulted in passing the impugned order.

5. The learned counsel for the petitioner has placed reliance on the circular issued by the Principal Secretary and Commissioner of Commercial Taxes in Circular No.7/2014 dated 03.2.2014. By the said circular, guidelines and instructions were given to the Assessing Officers while completing the assessment and one such guideline being with regard to passing orders and it has been directed that 15 days time shall be given to the dealer to submit their objections, which would be a reasonable opportunity.

6. The learned counsel for the petitioner submits that if an opportunity is given to the petitioner, they will appear before the Assessing Officer, produce necessary documents and substantiate that the correct classification of the product is under Commodity Code 2025. Considering the facts and circumstances of the case, this Court is inclined to grant one opportunity to the petitioner.

7. Accordingly, the writ petition is disposed of with a direction to the petitioner to treat the impugned order as a show cause notice only with regard to the issue pertaining to inter-state sales and submit their objections along with supportive documents within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing, peruse the documents that may be produced and pass fresh orders on the said issue in accordance with law. Till then, no coercive action shall be initiated for recovery of tax arising out of the said issue. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST), Chrompet Assessment Circle,
Station No.117, Station Road, Radha Nagar, Chennai-44.

+1 cc to Mr.Adithya Reddy Advocate sr 35100
+1 cc to Special Govt Pleader sr 35532

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