IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No. 2966 of 2017
and
W.M.P.Nos.2853 and 2854 of 2017

M/s. Aurum Dental,
Rep. by its Proprietor - Dr.Akeela Rahman,
No.5/20, Thilak Street,
T.Nagar, Chennai - 600 017. ...Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Commercial Taxes and
Registration Department,
Fort St.George,
Chennai - 600 009.

2. The Authority For Clarification and
Advance Ruling, Rep. by its
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

3. The Assistant Commissioner (CT),
T.Nagar (North) Assessment Circle,
Chennai. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records on the file on the 2nd respondent in its impugned proceeding made in A.C.A.A.R.121/2014-15 (Acts Cell-II/3228/2015) dated 02.09.2015 and quash the same.

For Petitioner : Mr.S.Prasannakumar,

For Respondents : Mrs. G.Dhanamadhri
Government Advocate

ORDER

Heard Mr.S.Rajasekar, the learned counsel appearing for the petitioner and Mrs.G.Dhanamadhri, the learned Government Advocate appearing on behalf of the respondents.

2. The petitioner has impugned the order passed by the second respondent, Authority for Clarification and Advance Ruling, dated 02.09.2015.

3. The petitioner is a registered dealer on the file of the third respondent under the provisions of the the Tamil Nadu Value Added Tax Act, 2006 (the TNVAT, for brevity) and Central Sales Tax Act, 1956 (CST Act, for brevity). The petitioner had approached the second respondent, requesting for a clarification as regards the rate of tax applicable on prosthetic teeth/denture. The second respondent considered the application filed and clarified that the prosthetic teeth/denture dealt with by the applicant/petitioner fall under Entry 81 of Part-B of first schedule to TNVAT Act, 2006, attracting levy of tax at 5%. The petitioner is before this Court, challenging the said order, being contrary to the earlier clarification issued under Section 28-A of the Tamil Nadu General Sales Tax Act, 1959.

4. It is submitted that the impugned clarification is contrary to the earlier clarification issued, which continues to remain in force even under the TNVAT regime. In support of his contention, the learned counsel placed reliance on the decision of the Division Bench, in Pezzeria Fast Food Restaurant (Madras) Pvt. Ltd., Vs. Commissioner of Commercial Taxes, Chennai) reported in 140 STC 97.

5. The learned Government Advocate appearing for the respondents submitted that the petitioner has filed a Review Application before the second respondent, by Application dated 23.09.2015, and parallely has filed this Writ Petition. The said Review Application has been heard by the second respondent on two dates and the matter is now pending before the second respondent.

6. Considering the above facts and circumstances, there will be a direction to the second respondent to consider the petitioner's Review Application and afford an opportunity of personal hearing and pass orders on merits and in accordance with law within a reasonable time. The petitioner is entitled to canvass all issues before the second respondent and the Review Application may be considered independently based on the materials that may be placed by the petitioner before the second respondent. Till a decision is arrived at by the second

respondent on the Review Application, the third respondent is directed not to take any coercive action against the petitioner in respect of prosthetic teeth/denture. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

sd

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Department of Commercial Taxes and
Registration Department,
Fort St.George,
Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
The Authority For Clarification and
Advance Ruling,
Ezhilagam, Chepauk,
Chennai - 600 005.

3. The Assistant Commissioner (CT),
T.Nagar (North) Assessment Circle,
Chennai.

+1cc to Special Government Pleader Sr.No.29681
+1cc to M/s.R.Hemalatha, Advocate Sr.No.29470

SG(CO)
sm:15.5.2018