BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.6546 of 2011
and
M.P.(MD)No.2 of 2011

M/s.Chamadhi Trades,
Represented by its Partner
G.Ravindran : Petitioner

Vs.

The Commercial Tax Officer,
Thirumangalam Assessment Circle,
Thirumangalam,
Madurai District. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records in TIN 33825043301/2008-09, dated 24.03.2011 on the file of the respondent herein and quash the same as illegal and against the settled proposition of law.

For Petitioner : Mr.S.Karunakar
For Respondent : Mrs.J.Padmavathi Devi,
Special Government Pleader

ORDER

The petitioner is a dealer of food items, matches, toffees, biscuits, chips, etc., and an assessee under the respondent holding VAT Registration No.TIN 33825043301. The dealer has submitted the returns under self-assessment basis for the assessment year 2008-2009. On the basis of VAT audit conducted at the place of business of the petitioner on 19.11.2009, the respondent issued a revision notice dated 10.01.2011. The respondent has found that the chips sold by the petitioner with a brand name for a sum of Rs.7,00,512/- from 17.10.2008 to 18.11.2009 attracts 12.5% tax as per Part C of the first Schedule under the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as 'the TNVAT Act'], whereas, he has paid only 4% tax and hence, proposed to revise the order. The petitioner submitted a detailed reply stating that the chips is a processed vegetable and would attract tax under Entry 107 of Part B of the first Schedule to TNVAT Act and not under residuary entry. Despite the reply, the respondent simply confirmed the proposal by relying on the clarification issued by the Commissioner of Commercial Taxes. Aggrieved over the order, the petitioner is before this Court.

2. The respondent denied all the averments made in the affidavit filed in support of the Writ Petition and would contend that as per the clarification issued by the Commissioner of Commercial Taxes, Chennai, in VAT Cell 7342/2007 VCC No.225, dated 29.03.2007, the sale of chips are taxable at 4% without a brand name vide Entry 51 of Part B of the first Schedule and with a brand name are taxable at 12.5% vide Part C of the first Schedule. Since the petitioner has paid only 4% tax, the demand for payment of the difference of tax, as per the clarification issued by the Commissioner of Commercial Taxes, is within the provisions of the Act and in accordance with law.

3. I have considered the submissions made on either side.

4. The admitted fact is that the petitioner is a dealer of Bingo chips. Potato chips are, admittedly, processed vegetables. Entry No.107 in Part B of the first Schedule specifically specifies that processed fruit and vegetables including fruit jam, jelly, etc., other than those specified in the fourth Schedule, are liable to be taxed at 4% and for the other goods under Entry 69, the tax payable would be at the rate of 12.5%.

5. In a similar circumstance, in the case of Pepsico India Holdings Pvt. Ltd. v. Commissioner of Commercial Taxes, Chennai and others reported in [2010] 29 VST 214 (Mad), the first Division Bench of this Court passed an order on 10.11.2009, wherein it was held that a Division Bench of the Guwahati High Court in Pepsico India Holdings Pvt. Ltd. v. State of Assam reported in [2009] 25 VST 41, observed that potato chips sold by the appellant under the same brand name "Lays" and "Uncle Chips" are held to be classifiable as processed vegetables and not to come under a residuary entry. Following the said judgment, a contention was made that the clarification issued by the Commissioner of Commercial Taxes was totally erroneous. Ultimately, it was held that the potato chips will fall under the processed vegetable and when there is a specific entry, the tax applicable to that entry alone has to be applied and it is not expected to go to the residuary item.

6. From the perusal of the judgment of the first Division Bench of this Court, it is very clear that the chips will fall under the category 'processed vegetable' and accordingly, the same is liable to be taxable under Entry 107 in Part B of the first Schedule to the TNVAT Act. Therefore, it cannot be taxed under Entry 69 at the rate of 12.5%. I respectfully follow the judgment of the Hon'ble First Division Bench and conclude that the impugned order passed by the respondent is not sustainable. Further, the clarification issued by

the Commissioner of Commercial Taxes is not accepted by the Hon'ble Division Bench. Once it is decided that the clarification is not sustainable, it cannot be followed in other cases on similar issues.

7. In the result, the Writ Petition is allowed and the impugned order passed by the respondent dated 24.03.2011 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer,
Thirumangalam Assessment Circle,
Thirumangalam,
Madurai District.

+1CC to Special Government Pleader in SR.NO.63034.

SML
DS/KKR/SAR-2 :14.05.2018: 3P/3C

Order made in
W.P(MD)No.6546 of 2011
Dated: 23.04.2018