IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

Writ Petition No.41606 of 2018

Between:

M/s. ACP Industries Ltd., represented by its Managing Director Sri A.V. Ambica Prasad, having registered Office at Anasuya Bhavan, Powerpet, Eluru, W.G. District

… Petitioner

Vs.

Union of India, represented by its Joint Secretary, Ministry of Finance, New Delhi and 2 others

… Respondents

Counsel for the Petitioner : Mr. C. Raghu

Counsel for Respondents : Mr. M.V.J.K. Kumar, Standing counsel

HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

Writ Petition No.41606 of 2018

ORDER: *(per V. Ramasubramanaian, J)*

The petitioner has come up with the above writ petition challenging a show cause notice issued by the 2nd respondent herein, calling upon the petitioner to show cause as to why the products manufactured by them should not be treated as excisable goods falling under Chapter Special Head No.33029090 of the Schedule to the Central Excise Tariff Act, 1985 and to visit the petitioner with all consequences flowing out of the same.

2. Heard Mr. C. Raghu, learned counsel for the petitioner and Sri M.V.J.K. Kumar, learned standing counsel for the Department.

3. According to the petitioner, what is manufactured by them is exempt under Notification No.09/2017-CE, dated 30-06-2017, as it falls under the category of Agarbathi. According to the learned counsel, Agarbathi is included at S.No.8A, even under the Notification No.13 of 2015, dated 01-03-2015.

4. But, it appears from the notice that the Department is attempting to distinguish the two. Therefore, the petitioner claims to have submitted a reply to the show cause notice on 17-04-2018. However, in order to give a full opportunity to the petitioner, the 2nd respondent issued a notice dated 16-10-2018 to produce records relating to the further period. It is only this notice to produce records

that triggered the petitioner to come up with a challenge to the original show cause notice.

5. Therefore, we are of the considered view that the 2nd respondent should have a free hand to examine reply with reference to the notification and pass orders in accordance with law and on its own merits. This is not a stage at which an interference is possible.

6. Therefore, the writ petition is disposed of directing the 2nd respondent to pass an order of adjudication, after giving an opportunity of personal hearing to produce evidence that the petitioner wants to produce.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

Date: 17-12-2018

Ksn