IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.18835 of 2008
and
M.P.No.1 of 2008

M/s.Roshan Commercial Trades Pvt. Ltd.,
3-B, Park Enclave,
No.6/13, Park Avenue,
Kesavaperumalpuram,
R.A.Puram, Chennai - 28. ...Petitioner

Vs

The Deputy Commercial Tax Officer,
Adayar-I, Assessment Circle,
Greenways Road,
Chennai - 600028. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records of the respondent pursuant to his proceedings in TNGST 0862164/2005-06 dated 13.06.2008 received on 07.07.2008 and quash the same.

For Petitioner : Mr.S.Mohan

For Respondent : Mrs.Dhanamadhri, GA

O R D E R

The issue involved in the present writ petition revolves around the substantial questions as to whether the goods in question are Ayurvedic Medicine of Food supplement and as to whether the respondent was justified in assessing the same at 12%, for the assessment year 2005-2006.

2. It is brought to the notice of this Court that in connection with the assessment years 2001-2002, 2002-2003 and 2003-2004, the issue was decided in Tax Case Revision Nos.1 to 3 of 2014, wherein, the Division Bench of this Court had held as follows:

> 10. The authoritative opinion of qualified scholars in Ayurveda was accepted and the tribunal in our view, rightly held that such authoritative opinion cannot be brushed aside, as the department has no such technical knowledge to reject such material. Further more, the interpretation of the revenue, that they are food supplements and the common parlance test was also rejected. Thus, ultimately it held that the product is Ayurvedic Proprietary Medicines and direction was issued to the Assessing Authority to treat the items as Ayurvedic preparations and tax accordingly. We have informed that the order passed by the Kerala Sales Tax Tribunal has attained finality and the appellant therein, the person who purchased the product from the petitioner before us has also been granted refund. Since the product is same, the factual finding will bind the respondent department, though the decision was rendered by a tribunal in the State of Kerala. The revenue has not been able to bring down any material to dislodge the factual finding recorded by the Tribunal duly supported by expert opinion. Therefore, the second ground on which the tribunal refused the relief to the petitioner deserves to be set aside.
>
> 11. Third and the last ground is that the product is marketed through multi level marketing and not sold in all the shops. This can hardly be a reason to determine the rate of tax payable on the product when it is sold. The manner in which the product is sold cannot be a test to determine the nature of the product of that matter at what rate it has to be taxed. Therefore, the Tribunal misdirected itself in referring to the method of marketing as a reason for imposing a higher rate of tax. It is common knowledge that now a days all products are available through online purchaser. Therefore, the method of purchase at a stretch of imagination cannot be a reason to impose a higher rate of tax.
>
> 12. Thus, for the above reasons, the order passed by the Tribunal requires interference. Accordingly, the Tax Case Revisions are allowed and the Substantial Questions of Law are answered in favour of the appellant. No costs.

3. In view of the decision taken by the Division Bench, the impugned order passed by the respondent herein requires re-consideration.

4. In the light of the above observations, the impugned order dated 13.06.2008, is set aside and the matter is remanded back to the respondent herein for fresh consideration. The petitioner is also liberty to submit his objections, along with the copy of the decision rendered by this Court in Tax Case Revision Nos.1 to 3 of 2014, within a period of 15 days from the date of receipt of copy of this order and on receipt of the same, the respondent herein shall consider it in the light of the decision of the Division Bench of this Court and pass orders, in accordance with law, as expeditiously as possible.

5. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

hvk

To

The Deputy Commercial Tax Officer,
Adayar-I, Assessment Circle,
Greenways Road,
Chennai - 600028.

+1 cc to Mr.S.Mohan, Advocate, S.R.No.62710

W.P.No.18835 of 2008
and
M.P.No.1 of 2008

SS(CO)
SSM(26/08/2019)