IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.23339 OF 2010
AND
M.P.NO.1 OF 2010

Tvl.P.M.Enterprises,
By its Proprietor,
Mukesh Kumar Singh,
No.15, Perumal Mudali St,
Kondithope,
Chennai - 600 079. ... Petitioner

Vs.

1. The Commercial Tax Officer,
   Vallalar Nagar Assmt.Circle,
   Chennai.

2. The Deputy Commercial Tax Officer,
   Vallalar Nagar Asst.Circle,
   Chennai. ... Respondents

Prayer:
Writ Petition is filed under article 226 of the Constitution of India, writ of Certiorari, to call for the records of the reassessment order passed by the first respondent dated 15.04.2010 bearing TNGST./116820/2006-07 and to quash the same.

For Petitioner : Mr.K.Senniappan

For Respondents : M/s.G.Dhanamadhri
Government Advocate

ORDER

Heard learned counsel for the petitioner and the learned counsel for the respondent Commercial Tax Department.

2.The petitioner has challenged the impugned reassessment order dated 15.04.2010 for the Assessment year 2006-07 under TNGST Act, 1959.

3.By the impugned order, the appellant has been denied the benefit of exemption under Entry 2 of Part A of the 3rd Schedule of the TNGST Act, 1959.

4.The learned counsel for the petitioner submits that "Gutka" was exempted in terms of Entry 2 of Part A of the 3rd Schedule of the TNGST Act, 1959 and was not liable to re-sale tax at 1% as per Entry 15 of the 11th Schedule at 40% at the point of sale.

5.This issue was earlier subject matter of W.P.No.12749 of 2009 after reassessment was made by the 1st respondent vide order dated 15.5.2009 bearing reference TNGST/1151820/2006-7.

6.By an order dated 8.2.2020, the Writ Petition was disposed leaving it open to respondent to issue a fresh proper notice in accordance with law and to proceed under section 16(1) of the Act. Pursuant to the said order, a fresh notice dated 10.03.2010 was issued to the petitioner which has culminated in the impugned order. Since the issue pertains to classification of a product namely "Gutka" and denial of exemption under in terms of Entry 2 of Part A of the 3rd Schedule of the TNGST Act, 1959. The present Writ Petition filed by the petitioner cannot be entertained as the petitioner has an alternate remedy. Further, the issue relating to classification would involve disputed questions of fact which cannot be decided under Article 226 of the Constitution of India.

7.Under these circumstances, I am of the view that the present Writ Petition is liable to be dismissed. However, liberty is given to the petitioner to file an appeal before the appellate authority in accordance with law within 30 days from the date of receipt of this order and if such appeals filed with the aforesaid period, the said appellate authority shall dispose the same within a period of 6 months thereafter.

8.The Writ Petition stands dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer,
   Vallalar Nagar Assmt.Circle,
   Chennai.

2. The Deputy Commercial Tax Officer,
   Vallalar Nagar Asst.Circle,
   Chennai.

+1cc to Mr.K.Senniappan, Advocate, S.R.No.104800
+1cc to the Special Government Pleader(T), S.R.No.105012

W.P.No.23339 of 2010
and
M.P.No.1 of 2010

MR(CO)
CS/20/02/2020