IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.25170 of 2005
and
W.M.P. Nos.27561 of 2005

M/s.Rukmani Packwell Traders
rep. by its Partner Smt.Laila Subramaniam,
A.R.R. Road, Kumbakonam .... Petitioner

vs

1.The Union of India
rep. by its Secretary to Government,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

2.The Assistant Commissioner of Central Excise,
Medical College Road,
Thanjavur - 7. .... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Declaration, declaring that the Scented Supari - Betal nut Powder is not an excisable commodity under the Central Excise Act till 16.03.1995 as on date on which the same was introduced as excisable, commodity in Central Excise Tariff Act.

For Petitioner : Mr.K.Soundararajan

For Respondents : Mr.V.Sundareswaran,
Senior Panel Counsel

O R D E R

The petitioner prays for a declaration to the effect that Scented Supari - Betal nut Powder is not an excisable commodity under the Central Excise Act till 16.03.1995.

2. A writ of this nature is not liable to be granted for various reasons. Firstly, the taxability or otherwise of a commodity is a matter of assessment and has to be determined by an Assessing Officer after the process of proper adjudication.

Moreover, this very assessee has challenged assessments involving the very same issue that have travelled in appeal to the Supreme Court. In the case of Commissioner of Central Excise, Trichy Vs. Rukmani Pakkwell Traders [2004 (165) E.L.T. 481], the issue has been conclusively decided in favour of the Revenue.

3. Notwithstanding this, the petitioner has filed the present Writ Petition in 2005 and has been granted an order of status quo in regard to the recovery of excise duty on 27.10.2006, which it is enjoying till date. In fact, a learned Single Judge of this Court by order dated 27.10.2006, has noted at paragraph No.5 that the challenge to the demand was decided by the Supreme Court in favour of the Revenue and this order has been passed on 17.02.2004.

4. The issue that was decided by the Supreme Court on 17.02.2004 relates to the claim of exemption in respect of Scented Supari - Betal nut Powder and has been held against the assessee. Hence, the present Writ Petition filed on 22.07.2005, after passing of the order of the Supreme Court, and seeking a declaration adverse to the judgment of the Supreme Court is wholly misconceived and a gross abuse of process of law.

5. This Writ Petition is thus dismissed. I also deem it fit in the circumstances as I have noticed above to impose costs upon the petitioner of a sum of Rs.50,000/- (Rupees Fifty Thousand only) to be paid to Blue Cross of India, 1 Eldams Road, Chennai 600018 within a period of four (4) weeks from date of receipt of a copy of this order. Connected Miscellaneous Petition is also dismissed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

rkp

To

1. The Secretary to Government,
   The Union of India
   Ministry of Finance,
   Department of Revenue,
   North Block, New Delhi.

2.The Assistant Commissioner of Central Excise,
Medical College Road,
Thanjavur - 7.

3. The Secretary
Blue Cross of India
1 Eldams Road, Chennai 18.

+1 CC to Mr.V.Sundareswaran, Advocate sr 82854.

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GMR(CO)
SP(23/01/2020)