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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.Nos.2374 to 2376 of 2021
and
C.M.P.Nos.15160, 15163 & 15171 of 2021

M/s.General Traders (Chennai) Pvt. Ltd.,
Now Known as G.T. India Pvt. Ltd.,
Represented by its Director, Arvind Kumar,
Now at No.249, Sydenhams Road,
Chennai – 600 003. ... Appellant in all appeals

Vs.

The Commercial Tax Officer,
Sowcarpet-II Assessment Circle,
N.S.C.Bose Road,
Now Sowcarpet Assessment Year,
Chennai. ... Respondent in all appeals

Common Prayer : Writ Appeals in W.A.Nos.2374, 2375 & 2376 filed under Clause 15 of the Letters Patent to set aside the order, dated 26.07.2021, passed in W.P.Nos.14522, 14523 & 14521 of 2014 respectively.

Prayer in W.P.Nos.14522, 14523 & 14521 of 2014: Writ Petition filed under Article 226 of the Constitution of India calling for the records of the respondent in 33620241620/ 2007-2008, 2008-2009 & 2009-2010 dated 8.5.2014 and quash the same and further direct the respondent that the MSG is classifiable under Entry 1 of the Part B of First Schedule of TNVAT Act.

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For Appellant : Ms.C.Rekha Kumari
in all the appeals

For Respondent : Mr.M.Venkateswaran
Government Counsel
in all appeals

COMMON JUDGMENT
(Judgment was delivered by T.S. SIVAGNANAM, J.)

These Writ Appeals have been filed by a dealer, registered under the provisions of erstwhile Tamil Nadu Value Added Tax Act, 2006 ("TNVAT Act" for brevity), challenging the common order passed in W.P.Nos.14521 to 14523 of 2014, dated 26.07.2021.

2.The appellant filed the writ petitions challenging the Assessment Orders passed by the respondent, dated 08.05.2014, contending that the product dealt with by them is classifiable under Entry 1 of Part B of First Schedule of the TNVAT Act. The appellant placed reliance on the decision in a batch of cases in M/s.Ajinomoto India Pvt. Ltd. & TVL.Sha Kanthilal Jayanthilal v. The State of Tamil Nadu and others [W.P.Nos.28794 to 28796 of 2010 and W.P.No.11461 of 2011 dated 27.11.2019], wherein, the appellant therein also sought for an identical prayer and those writ petitions were allowed. Therefore, the appellant contended before the learned Single Bench that the issue involved is squarely covered by the said decision.

3.The learned Single Bench has recorded the submission of the learned counsel for the appellant in Para No.2 of the impugned order, but taken note of the submission of the learned Government Counsel that, as against the said common order dated 27.11.2019, the State has preferred appeals before the Division Bench. This submission has also been recorded and the learned Writ Court observed that, when the State has preferred appeal, it is not preferable to follow the said order in a routine manner. We find that, in Para No.3 of the order passed in the writ petition, though the learned Writ Court makes such an observation, the learned Government Counsel has not been able to point out as to what is the Writ Appeal number and whether the appeal has been admitted and whether any interim orders have been granted. After recording that it is not preferable to

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follow the order passed in the batch of cases, as the State has preferred appeal before the Division Bench of this Court, the learned Writ Court had directed the appellant to avail the alternate remedy provided under the TNVAT Act by approaching the First Appellate Authority. Aggrieved by the said order, the appellant is before us.

4.We have heard Ms.C.Rekha Kumari, learned counsel for the appellant and Mr.M.Venkateswaran, learned Government Counsel appearing for the respondent.

5.On a query raised by the Court, the learned Government Counsel, on instructions from the officer who is present in the Court, would submit that it is true that the State has preferred Writ Appeals against the common order, dated 27.11.2019, in the batch of cases in M/s.Ajinomoto India Pvt. Ltd. (supra) and the appeals are yet to be numbered and they are still in SR stage, in W.A.SR.Nos.41371 to 41374 of 2021.

6.As on date, the order passed in M/s.Ajinomoto India Pvt. Ltd. holds the field and if it is so, the product has to be classified under Entry 1 of Part B of First Schedule of the TNVAT Act, unless and until the order passed in the writ petitions is modified, varied or set aside. That apart, when the learned Single Bench has held in favour of the appellant with regard to the classification of the goods, in the opinion of this Court, it would be a futile exercise to relegate the appellant to file an appeal before the First Appellate Authority, as the First Appellate Authority will not be in a position to render any opinion contrary to the orders passed in the batch of cases.

7.Therefore, there are two options available, one is to restore the writ petitions to the file of the learned Single Bench and keep the matter pending awaiting the decision of the Hon'ble Division Bench and the other option is to allow the Writ Appeals and consequently, set aside the order passed in the writ petitions and allow the writ petitions following the order in M/s.Ajinomoto India Pvt. Ltd. In our considered view, the first of the two options would be better, since the State has preferred appeals and the appeals are yet to be numbered.

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8.For the above reasons, these Writ Appeals are allowed and the order passed in the writ petitions is set aside. Consequently, the writ petitions are restored to the file of the learned Single Bench of this Court and the interim order, which was granted in favour of the appellant/writ petitioner, stands restored and the impugned Assessment Orders shall remain stayed until the disposal of the writ petitions. No costs. Connected Miscellaneous Petitions are closed.

9.Registry is directed to list the writ petitions along with W.A.SR.Nos.41371 to 41374 of 2021.

Sd/-
Assistant Registrar (CS-CCC)

// True Copy //

Sub Assistant Registrar

mkn

To

The Commercial Tax Officer,
Sowcarpet-II Assessment Circle,
N.S.C.Bose Road,
Now Sowcarpet Assessment Year,
Chennai.

Copy to
The Section Officer, Judicial Section, High Court, Madras.

+1CC to M/s.C.Rekha Kumari, Advocate, SR.No. 48699
+1CC to The Government Pleader, SR.No. 49562

W.A.Nos.2374 to 2376 of 2021

MG(CO)
B.VC (12/10/2021)

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