WPA 15535 OF 2016

06.02.2023
Sl no. 22
Ct no. 2
P.M.

M/s. Ajay Saha
- Vs -
Sales Tax Officer, Krishnanagar Charge & 3 Ors.

Mr. Debabrata Chakraborty
... for the petitioner

Mr. Anirban Ray, Ld. Govt. Pleader
Md. T. M. Siddiqui,
Mr. D. Ghosh
Mr. N. Chatterjee
... for the State.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 18th May, 2016 passed by the First Track Revisional authority dismissing the revision application in question filed by the petitioner against the order of the appellate authority treating the product of the petitioner as 'rice bran' and rejecting the claim of the petitioner that the said product was 'tush kuro' and that the same is a cattle feed. While rejecting the claim of the petitioner, the revisional authority in its impugned order has discussed elaborately about the nature of product and has given its reason. Relevant portion of which are as hereunder: -

"A/Adv was asked to submit the required documents before the concerned assessing officer for checking and R.R. was asked to submit a report after checking.

On 10/3/16 R.R. submitted a report of Ld STO/KR. A/Adv could not produce the purchase and sale bills of 'tush kuro' because those were claimed to be seized at Barrackpore Range. A/ADV could not produce the seizure receipt or any report from that office. R.R. informed no such report was drawn by that office. The certificates of the authorities of Andhra Pradesh were submitted by A/Adv.

Hence the instant order is passed on basis of the report submitted before the STO/KR and ASTO/KR. It appears from the copies of the sale bills presented to them that those sales were effected to the dealers of Andhra Pradesh who deal with "Oil". But it was held by the Ld CCT/WB that 'tush kuro' is an cattle feed and extraction of oil is not possible from it. The Certificates of Andhra Pradesh authorities are not helpful to judge what types of goods were actually sold to them. It was not actually stated whether they had purchased cattle feed rice bran. if any oil can be extracted from the items purchased by them then it should be treated as 'rice bran' not the 'tush kuro'.

Therefore after considering the report of the authorities below as the A/Adv could not produce the original purchase and sale bills before the bench the identity of the goods can not be ascertained. A/Adv could have collected the seized documents from the Barrackpore Range. Actually he could not establish whether such seizure of records for the period as mentioned above was at all done or not.

Hence it is held that in absence of anything to the contrary the item sold is treated as "rice bran" which is actually the raw materials for extraction of rice bran oil and "rice bran" is taxable. (It is gathered from other reports of KR charge that the dealer had dealt with this item also).

So all the above noted appellate orders are confirmed. Ld. Assessing officer is hereby directed to take necessary action as per law."

Learned advocate appearing for the petitioner, in support of his claim that the product in question is 'tush kuro' and not 'rice bran', intends to rely on serial No. 3 under schedule 'A' of the West Bengal Value Added Tax, 2003 by contending that the said product is cattle feed.

I have perused the said schedule and I do not find that the product in question has been specifically exempted from tax under the said schedule ‘A’.

Petitioner contends that his product is cattle feed and is not liable to be taxed but nowhere the particular product on which the petitioner wants exemption has been mentioned in the said schedule. The said schedule simply includes the cattle feed as exemption from tax but what will be the component or ingredients of cattle feed there is no description of that and this writ Court in exercise under Article 226 of the Constitution of India is not an expertise to declare the product in question claimed by the petitioner either the same as ‘tush kuro’ or cattle feed.

Considering the facts and circumstances of this case and particularly taking into consideration that this is not those type of cases which falls within the categories where violation of any principle of natural justice has been occurred or the impugned order is without jurisdiction or that the impugned order passed by the authority is patently contrary to any specific provision of law and as such I am not inclined to disturb the fining of the revisional authority and substitute the same by acting as an appellate authority.

In view of the discussion made above this writ petition being WPA 15535 is dismissed and interim order, if any, stands vacated.

(Md. Nizamuddin, J.)