IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.2942 of 2009 and
M.P.No.1 of 2009

M/s.Roshan Commercial Trades Pvt. Ltd.,
3-B, Park Enclave,
No.6/13, Park Avenue,
Kesavaperumalpuram,
R.A.Puram, Chennai-600 028
Rep. by its Manager R.Gopinath .... Petitioner

Vs.

The Commercial Tax Officer,
Adyar-I Assessment Circle,
Greenways Road,
Chennai-600 028. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, calling for the records of the Respondent pursuant to his proceedings in TNGST/0862164/2004-2005 dated 12.1.2009 received on 19.01.2009 and quash the same.

For Petitioner : Mr.S.Vijayakumar
For Respondents : Mrs.E.Ranganayaki
Additional Government Pleader

O R D E R

The issue that arises in this writ petition relates to the rate of tax in respect of the products sold by the petitioner. This very issue, as to whether the goods sold constitute food supplements or Ayurvedic items has come to be decided by a Division Bench of this Court in Tax Case Revision Nos.1 to 3 of 2014 and by order dated 24.01.2019 the Tax Case Revisions have been allowed and the substantial questions of law have been answered in favour of the petitioner. The questions decided are as follows:

> *'(i) Whether the goods in question are Ayruvedic Medicine of Food supplement?*
>
> *(ii) Whether the department was justified in taxing the goods as food supplement and not as Ayurvedic Medicine?*
>
> *(iii) In respect of Assessment year 2001-2002, whether the rate of tax on the imported goods is to be charged at the rate of 12% in terms of Entry 67 Part D of 1 st Schedule, as demanded by the department or 4% as claimed by the assessee?*
>
> *(iv) In respect of Assessment Year 2002-2003 and 2003-2004, whether the rate of tax on the imported goods failing under Entry 9 of Part D and E of 11 th Schedule is liable to be charged at the rate of 20% holding that the goods fall under Entry 40 Part D and E of 1 st Schedule?*
>
> *(v) Whether penalty is imposable in the facts and circumstances of the present case?'*

2.The dispute in the impugned order relates to the rate of tax on the First sales of Reishi Gano and Gano Cellium Capsules. While the petitioner has remitted tax at 4%, it is the case of the Department that the aforesaid products are liable to tax at 20%. This stand has come to be rejected by the Division Bench.

3.In light of the aforesaid order, the impugned order relating to rate of tax on First sales of Reishi Gano and Gano Cellium Capsules and enhancing the same to 20% is contrary to law and is set aside. This writ petition is allowed. No costs. Connected Miscellaneous petition is closed.

28.03.2023

vs
Index: Yes/No
Speaking order
Neutral citation:Yes

To

The Commercial Tax Officer,
Adyar-I Assessment Circle,
Greenways Road,
Chennai-600 028.

Dr.ANITA SUMANTH, J.

vs

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