IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.17639 of 2022
and
W.M.P.No.16912 of 2022

M/s.Aasai Super Tobacco,
Represented by its Proprietor,
Mohideen Natarsha,
Rice Mill Road, Keelakal Poondi,
Tittagudi Taluk,
Cuddalore District – 606 303. .. Petitioner

Vs.

The Assistant Commissioner of GST & Central Excise,
Cuddalore Division, 1 Vellalar Nagar,
Manjakuppam,
Cuddalore – 607 001. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the respondent in GSTIN No: 33ABSPN9616LIZY and quash the impugned Order-in-Original No: 01/2022-GST dated 19.05.2022 passed by the respondent as illegal and without jurisdiction.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The petitioner is aggrieved by the impugned Order-in-Original No: 01/2022-GST dated 19.05.2022 passed by the respondent.

2.By the impugned order dated 19.05.2022, the Assistant Commissioner of GST & Central Excise has confirmed the demand on the petitioner for short payment of compensation Cess for the period from July 2017 to November 2020 under Section 73(1) of Central Goods and Services Act, 2017 read with Section 11 of the Central Goods and Services (Compensation to States) Act, 2017. The petitioner has also been imposed with interest under Section 50 of the CGST Act, 2017 and further penalty of Rs.1,84,578/- under Section 122(2)(a) of the Central Goods and Services Act, 2017.

3.The specific case of the petitioner is that the product which is subject matter of the dispute is Cut Tobacco or Manufactured Tobacco. The respondent has confirmed the demand without subjecting the product to testing and therefore there is a manifest of violation of principles of natural justice. At the stage of admission, this Court, by its order dated 13.07.2022 directed drawing of sample for being taken for testing before the Authority, in terms of order passed in W.P.No.17606 of 2022 on the same day. However, no report is available.

4.There are several disputed question of facts. These are to be determined in the quasi Judicial proceedings under the hierarchy of the Authorities under the Goods and Service Tax Act, namely the Appellate Commissioner and the Tribunal. Although the Tribunal has not been constituted till date, nevertheless, this issue can be decided by the Appellate Commissioner by calling for a report of the expert regarding the nature of the product. This Court cannot decide questions of fact which are vital for final determination of the issue involved under Article 226 of the Constitution of India. Therefore, this Writ Petition is liable to be dismissed.

5.Since, the petitioner has filed this Writ Petition within the limitation prescribed for filing an appeal under Section 107 of the CGST Act, 2017, Court is inclined to dispose of this Writ Petition by giving opportunity to the petitioner to file a statutory appeal before the Appellate Authority under Section 107 of the CGST Act, 2017 within a period of 30 days from the date of receipt of a copy of this order.

6.If such appeal is filed by the petitioner within the time stipulated herein, the Appellate Authority shall consider the appeal and dispose of the same on merits on its turn and in accordance with law as expeditiously as possible, preferably within a period of six months from the date of receipt of the appeal. Needless to state that the petitioner is entitled to have a sample tested before the Authority and make an application before the Appellate Authority to send a sample for testing before the Testing Authority.

7.The Writ Petition stands disposed of with the above observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

03.08.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Assistant Commissioner of GST & Central Excise,
Cuddalore Division, 1 Vellalar Nagar,
Manjakuppam,
Cuddalore – 607 001.

C.SARAVANAN, J.

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W.P.No.17639 of 2022

03.08.2023