BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.06.2023**

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THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

W.P.(MD) No.15526 of 2023
and
W.M.P.(MD) No.13056 of 2023

M/S.Tulya Beverages Private Limited,
represented by its Chief Executive Officer J.Karthikeyan,
S.F.No.160/1B, Trichy Chennai National Highways,
Naranamanalam Village,
Kunnam Taluk,
Perambalur District,
Tamil Nadu 621 216. ... Petitioner

/vs./

1.The Commissioner of GST & Central Excise,
O/o. Commissioner of GST & Central Excise
Trichy.

2.The Assistant Commissioner of GST & Central Excise,
Trichy II Division,
No.1, Willaiams Road,
Contonment,
Trichirappalli 620 001.

3.The Deputy Director,
Directorate General of GST Intelligence,
Coimabtore Zone, 155-1,

Lakshmaanstreet,
Ukkadam,
Coimbatore 641 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned assessment order on the file of 2nd respondent vide proceeding in DIN-20230359XN000011161D, dated 29.03.2023 and quash the same as illegal and devoid of merits and further direct the 2nd respondent to redo the assessment proceedings by considering the products as dairy based 'Milk Drinks'.

For Petitioner : Mr.Raja.Karthikeyan

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

The above writ petition is filed for the issue of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned assessment order on the file of second respondent vide proceeding in DIN-20230359XN000011161D, dated 29.03.2023, quashing the same as illegal and devoid of merits and directing the second respondent to redo the assessment proceedings by considering the products as dairy based 'Milk Drinks'.

2.The case of the petitioner is that they are manufacturing and supplying the milk based drinks in different flavours under the brand names Chakra, Milma, Rajah, Nectorse, R2X, Milky Lips, Iris and also fruit based drinks in the name and style of MOH and SUN MOH and doing job work of manufacturing milk drinks. The petitioner would submit that during the investigation by the GST Intelligence Wing, Coimbatore Zonehad against the petitioner, they had contended that the petitioner has wrongly classified their flavored milk drinks/dairy products under HSN 042/0403, which attracted GST at 5% as against HSN 22029930, which attracts GST at 12%, as a result of which there is a short payment of 7% from 01.07.2017. The third respondent has called for explanation from the petitioner, which was furnished vide their letter dated 16.03.2022. Without considering the response, the third respondent had issued the show cause notice on 31.03.2022 and directed the petitioner to appear before the adjudicating authority/assessing authority/the second respondent herein.

3.The petitioner had sent a reply to the show cause notice on 14.06.2022 and thereafter they were afforded a personal hearing on 07.09.2022, 14.11.2022 and 18.11.2022, where they had appeared in person before the third respondent.

Without considering their response, their oral objections and the objections raised in the reply dated 16.03.2022, the second respondent had passed the impugned order dated 14.06.2022, which is the subject matter of challenge in this writ petition.

4.Mr.Raja.Karthikeyan, learned counsel appearing on behalf of the petitioner would submit that the flavored milk is manufactured only based on the milk products/animal based milk/dairy products, which contains more than 87% of milk and the remaining consists of sweet, flavors and very meager preservatives. However, the Intelligence Wing has wrongly considered the flavored milk as being of water based beverage, thereby contending that it has to be classified under Chapter-22 and not under Chapter-4. A test report of the ARS Food Testing Laboratory would clearly show that the petitioner's product is not water based and therefore, he would submit that since there is a serious dispute with reference to the very classification, this Court ought to interfere with the impugned order exercising the jurisdiction under Article 226 of the Constitution of India.

5.*Per contra*, Mr.N.Dilip Kumar, learned Standing Counsel for the respondents would submit that the petitioner has an effective alternative remedy in the form of an appeal under Section 107 of the Act. Without exhausting the said remedy, the petitioner has rushed to this Court. He would submit that the very grounds on which the writ petition has been moved and the arguments made by the learned counsel for the petitioner would clearly show that there is a serious dispute with reference to the classification, which cannot be dealt with by a Writ Court and can only be considered by the appellate authority. He would submit that the petitioner have themselves admitted that the classification of the product is under Chapter-22. Therefore, he would submit that the writ petition has to be dismissed with a direction to the petitioner to move the appropriate authority under the Act.

6.Heard the learned counsels appearing on either side.

7.A perusal of the impugned order would show that prior to coming into force of the GST Act, under the earlier regime the product was classified under HSN 22029930 in order to avail the concessional rate of central excise duty. After the introduction of the GST, the petitioner has deliberately changed the classification of flavored milk to a head under HSN 042/0403 in order to avail a low rate of GST ie; from 12% to 5%. However, there is absolutely no change either in the ingredients or in the manufacturing process. Further, the authority below has analyzed the export invoices of the petitioner which would clearly show that the petitioner was adopting the HSN 22029930 for Badam Milk. In the invoices, they have declared as follows:-

> *"The said export is against the EPCG licence No.0430011953 dated 07.12.2022."*

8.The further analyzes of the export details between January, 2021 and October, 2021, it is seen that all the export products are classified under HSN 22029930. Therefore, the respondents have considered each and every arguments put forward by the petitioner and the respondents have also analyzed the documents submitted by them. If aggrieved, the remedy is only by filing an appeal, since the petitioner has not been able to establish that there has been grave error in the exercise of jurisdiction or that there has been violation of principles of natural justice warranting the petitioner to approach this Court directly.

9.In the absence of the above, the Writ Petition is disposed of with liberty to the petitioner to file an appeal before the appropriate authority under Section 107 of the Act. It is needless to state that the time spent before this Court will not be taken into account while calculating the period of limitation. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

30.06.2023

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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P.T.ASHA, J.

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