BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.28856 of 2023
and W.M.P(MD).No.24901 of 2023

M/s.Agsar Match Industries,
Represented by its Partner N.R.K.Shankar,
No.510A, George Road,
Tuticorin-628 003. .. Petitioner

vs.

The Assistant Commissioner of CGST & Central Excise,
Tuticorin Division,
Tuticorin-628 008. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Ceritorari, calling for the records of the respondent in his proceedings in GEXCOM/SCN/GST/863/2023-CGST-DIV-TTN, quash the impugned order dated 04.09.2023 passed therein.

For Petitioner : Mr.R.L.Ranjani
Senior Counsel
for Mr.S.Raja Jeyachandra Paul

For Respondents : Mr.N.Dilip Kumar

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O R D E R

This Writ Petition has been filed challenging the impugned order passed by the respondent dated 04.09.2023 demanding a sum of Rs.1,72,26,554/- (Rupees One Crore Seventy Two Lakhs Twenty Six Thousand Five Hundred and Fifty Four only) as short payment of Goods and Service Tax for the period from July 2017 to September 2021, together with interest and penalty from the petitioner.

2. The petitioner is a manufacturer of Red Oxide Powder and other Colour Oxide Powder and he is registered as taxable person under the provisions of the Central Goods and Service Tax Act, 2017 and the Tamil Nadu Goods and Service Tax Act, 2017. Red Oxide Powder was classified under HSN Code 2601 and the other Colour Oxide Powders were classified under Chapter Heading HSN Code 2530 of the Central Excise Tariff Act. However, the petitioner being a SSI Unit was exempted from payment of Central Excise. With the introduction of CGST/TNGST Act, the Central Excise Act/Central Excise Tariff Act was subsumed in Goods and Service Tax and HSN Codes for the commodities were adopted under GST also. Insofar as the commodities falling under HSN Code 2601 and HSN Code 2530, the rate of Goods and Service Tax is 5%. Accordingly, the

petitioner has been classifying the Red Oxide Power and other Colour Oxide Powders under HSN Code 2530 and HSN 2601 and is paying GST at 5%. While so, the respondent has issued a show cause notice on 31.03.2023 under Section 74 of CGST Act proposing to levy and demand CGST/TNGST at the rate of 18% on the Red Oxide Powder and other Colour Oxide Powders supplied by the petitioner for the period from July 2017 to September 2021 together with interest under Section 50(1) and penalty under Section 122(2)(b) of CGST/TNGST Act. In reply to the same, the petitioner has given explanation to the respondent. However, overlooking the explanation given by the petitioner, the impugned order has been passed by the respondent, as against which, the present Writ Petition has been filed.

3. Mr.N.Dilip Kumar, the learned Standing Counsel appearing for the respondent, by relying on the written instruction given by the Superintendent (Legal), Tirunelveli Sub-Commissionerate, submits that the respondent is willing to re-consider the case of the petitioner.

4. In view of the submission made by the learned Standing Counsel appearing for the respondent, this Writ Petition is allowed and the impugned order

passed by the respondent on 04.09.2023, is set aside. The matter is remanded back to the respondent for fresh consideration and to take a decision afresh within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

14.12.2023

Index : Yes / No
NCC : Yes / No
Internet : Yes
ssb

To

The Assistant Commissioner of CGST & Central Excise,
Tuticorin Division,
Tuticorin-628 008.

B.PUGALENDHI, J.

ssb

WP(MD)No.28856 of 2023

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