BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.(MD)No.1131 of 2024
and
C.M.P.(MD)No.8630 of 2024

M/s.Miracles Sands & Chemicals,
4/191, 9th K.M. Ettayapuram Road,
Tuticorin – 628 003.
Represented by its Partner S.P.S.Palaniselvam. : Appellant

Vs.

The Commissioner of CGST & Central Excise,
Central Revenue Buildings,
Bibikulam,
Madurai – 625 002. : Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order in W.P.(MD)No.13887 of 2018 dated 19.10.2022 and allow the Writ Appeal.

For Appellants : Mr.D.Sivaraman
for Mr.J.David Ganesan
For Respondent : Mr.N.Dilip Kumar

JUDGMENT

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[Judgment of the Court was delivered by **R.SURESH KUMAR, J.]**

This Writ Appeal has been directed against the order made in W.P.(MD)No.13887 of 2018 dated 19.10.2022.

2.The appellant was the writ petitioner who challenged the order passed by the respondent / Revenue dated 15.03.2018, where excise duty had been imposed against the appellant with regard to the goods which according to the respondent / Revenue he has manufactured by way of chemical treatment or special manufacturing process.

3.It is the case of the appellant / writ petitioner before the writ Court that, what the ore that has been imported by the appellant / writ petitioner, the same product will also come after mixing because except the mixing process, no other chemical or manufacturing process have been undertaken by the appellant / writ petitioner and it is also evidenced that, the HT power supply was cut of from 14.09.1999 and therefore, the appellant company was doing the mechanical process of mixing various grades of titanium ore and there was no chemical treatment or special process of manufacturing and at the end of the process, the separated mineral sands have the same form and properties as they had at the time of import. Therefore, it was the case of the appellant / writ petitioner that the goods in question is not excisable.

4.However, learned Writ Court on the ground of non-exhausting of appellate remedy under the statue and also on the ground that the point raised by the appellant / writ petitioner is a question which relates to facts, therefore held that it cannot be gone into by the Writ Court under Article 226 of the Constitution of India. Therefore, the appellant / writ petitioner was driven by the Writ Court through the impugned order to go before the appellate authority and ultimately, dismissed the said writ petition, as against which the present appeal has been preferred.

5.Heard the learned Counsel for the petitioner, who would submit that there were three questions raised before the Writ Court, out of which atleast two questions relate to facts but the third question which was raised is a question of law where the finished goods are being supplied to Cochin Minerals & Rutile Ltd., which is a 100% “Export Oriented Unit” [EOU]. Therefore, so far as the EOU is concerned, whenever the goods are supplied to 100% EOUs, they are not excisable goods and the same having been accepted by the respondent / Revenue, since they refused to grant the benefit of exemption for the goods which is sold to 100% EOU, is a question of law which could have been entertained by the learned Judge. Hence, for the said reason alone, the order impugned is liable to be interfered with.

6.However, learned Standing Counsel appearing for the respondent / Revenue would contend that it is a question of law but also a question of mixed facts. Therefore, when there had been question of facts and law involved in a case, where the appeal remedy is provided under the statute, the assessee or the appellant / writ petitioner has to go only before the appellate authority.

7.Learned Standing Counsel would also submit that, the product of the appellant / writ petitioner after the process, which the revenue calls as a chemical or manufacturing process whereas the appellant claims that it is only a mixing mechanically made, whether is excisable or not is the question if it is arising, one more avenue is also available to the respondent. Without exhausting any of the remedies, since the appellant / writ petitioner has approached this Court, it was rightly rejected by the learned Judge. Hence, the order impugned does not require any interference.

8.We have considered the said submissions made by the learned Counsel on either side and have perused the materials available on record.

9.As has been rightly pointed out by the learned Standing Counsel for the respondent / Revenue, there are two avenues available for the appellant / writ petitioner, one is to file an appeal before the appellate authority, second is to go before the Advance Ruling Authority. Without exhausting any of the remedies, since the appellant / writ petitioner has approached this Court, the learned Judge has taken note of the factual matrix and taking aid of the judgment of the Hon'ble Supreme Court in the case of ***Thansingh Nathmal Vs. Superintendent of Taxes,*** *reported in* ***AIR 1964 SC 1419,*** was inclined to reject such writ petition only on the ground of non- exhaustion of alternative remedy which conclusion cannot be found fault with at our scrutiny. Therefore, we are not inclined to entertain this Writ Appeal. Hence, this Writ Appeal fails.

10. Accordingly, this Writ Appeal is dismissed. However, the dismissal of this writ appeal will not preclude the appellant / writ petitioner to prefer an appeal under the Statute before the appellate authority, within a period of three [3] weeks from the date of receipt of a copy of this order, failing which, the respondent/ Revenue would be at liberty to execute the order which was impugned before the Writ Court. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

[R.S.K.,J.] & [G.A.M.,J.]
11.07.2024

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

tsvn / MR

To

The Commissioner of CGST & Central Excise,
Central Revenue Buildings,
Bibikulam,
Madurai – 625 002.

R.SURESH KUMAR, J.

and

G.ARUL MURUGAN, J.

tsvn / MR

ORDER MADE IN

W.A.(MD)No.1131 of 2024

11.07.2024