

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13129 of 2020

and

W.M.P.(MD)No.11025 of 2020

M/s.N.V.K.Mohammed Rowther & Sons,
Represented by its Partner,
Solai Hall Road, Dindigul – 624 001.

... Petitioner

Vs.

The Joint Commissioner of GST & Central Excise,
Madurai Commissionerate,
Bibikulam, Madurai – 625 002.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent herein to conduct enquiry as regards raw material used and process employed in the manufacture of ROJA PAKKU, considering the manufacturing process and raw material used by the competitors who classified betel nut power supplied by them under different brand names under CH-0802.80 and decide the classification of ROJA PAKKU under GST Tariff based on judgements of the Hon'ble Supreme Court and the Tribunal in the matter of classification of Areca Nut Power under Central Excise Act/Tariff before proceeding to issue Show Cause Notice for recovery of any demand as had been proposed in Communication Case ID No.V/GST/15/08/2020 Adj. dated 08.07.2020 of the respondent herein.

For Petitioner : Mr.R.Raghavan

For Respondent : Mrs.S.Ragavendhre.

ORDER

Heard the learned counsel for the writ petitioner and the learned standing counsel for the respondent.

2.The petitioner is a manufacturer of betel nut product and he is dealing with the same in the name and style of “Roja Pakku”. The petitioner has been in the business for several years. There are a number of players in the said field. While the other manufacturers took the stand that the product in question will come under Chapter 8 of the Central Excise Tariff Act, 1985 and contested the stand of the department that the product will come under Chapter 21. The litigation was going in the Courts. Though similarly placed, the petitioner did not want to contest the matter and opted to be classified under Chapter 21. Eventually, the litigation ended in favour of the assessee. The Hon'ble Supreme Court in the decision reported in **2007 (210) E.L.T. 171 (S.C) (Crane Betel Nut Powder Works Vs. Commissioner of Customs and Central Excise, Tirupathi)** held that merely because betel nut are crushed into smaller pieces and sweetened later, it does not get converted into a new product. Therefore, the

stand of the assesseees that the product should be classified only under Chapter 8 and not under Chapter 21 was upheld. The petitioner appears to have ignored those developments in his favour probably for the reason that there was not much of financial implication.

3. Post GST, the products classified under Chapter 21 are levied at CGST 9% and SGST 9%. Products classified under Chapter 8 are taxed at a lesser rate. There is still some controversy as to whether they should be taxed at the rate of 2.5% + 2.5% or at the rate of 6% + 6%.

4. The petitioner does not want to go into the issue of classification or the rate of tax. All that the petitioner wants is that the respondent should not put the petitioner's past conduct against him.

5. I expressed serious doubts regarding the maintainability of the writ petition. I felt that when the respondent has not passed any order, the petitioner had prematurely approached the Court. The learned counsel for the petitioner thereupon brought to my attention the communication dated 08.07.2020 issued by the respondent calling upon the petitioner to pay tax to the tune of Rs.2,76,94,921/-, which amount was quantified by computing the applicable

rate of tax at CGST 9% and SGST 9% by classifying the product under Chapter 21. From this, I am able to understand an element of predetermination on part of the respondent. Of course, as rightly pointed out by the learned standing counsel, the respondent is yet to issue any show cause notice. But from this communication dated 08.07.2020, one can safely conclude that the respondent wants to classify the petitioner's product namely, Roja Pakku under Chapter 21 of Central Excise Tariff Act, 1985 and levy tax at CGST 9% and SGST 9%.

6.The learned counsel would point out that the product manufactured by the petitioner is similar in all respects to products such as “Nizam Pakku” and “Crane Pakku”. Those products are being taxed at a lesser rate and they have not been classified under Chapter 21.

7.There is considerable merit in the contention of the petitioner's counsel that the petitioner also deserves to be given a treatment of parity and not taxed at a higher rate, if the petitioner's product is comparable to Nizam Pakku and Crane Pakku. More than anything else, as per Article 141 of the Constitution of the India, the law declared by the Hon'ble Supreme Court is law of the land. Merely because the petitioner had earlier opted to be classified under Chapter 21, the petitioner's past conduct cannot operate as estoppel. In fact,

the petitioner's counsel made it clear that he will still clear all controversy and he will respond to the show cause and participate in enquiry, that may be initiated by the respondent. All that he wants is that the respondent should not predetermine the issue based on the petitioner's past conduct. I have already held that the petitioner's past conduct cannot operate as estoppel. Therefore, the writ petition is disposed of giving liberty to the respondent to proceed against the petitioner with the demand but then, by not putting the petitioner's past conduct against him. In other words, the issue will be approached from a clean slate. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes/ No
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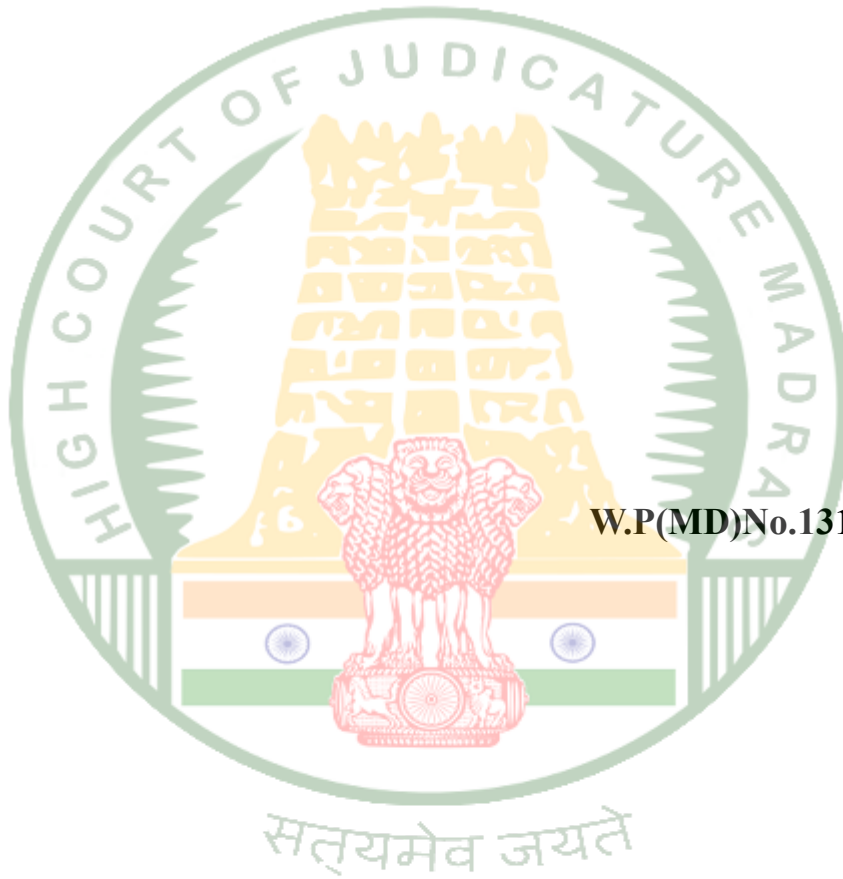
Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Joint Commissioner of GST & Central Excise,
Madurai Commissionerate,
Bibikulam,
Madurai – 625 002.

G.R.SWAMINATHAN, J.

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