

OD 14

ORDER SHEET

WPO 588 of 2019
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. HARSH POLYFABRIC PVT LTD
Vs
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date 10th January, 2023

Appearance:
Mr. Rahul Tangri, Adv.
Mr. Dipankar Majumder, Adv.
...For the Petitioner
Mr. Sovan Mukherjee, Adv.
...For Union of India
Mr. A. Ray, Ld. GP
Mr. T.M. Siddiqui, Adv.
Mr. Debasish Ghosh, Adv.
...For the State
Mr. K.K. Maiti, Adv.
Ms. Ekta Sinha, Adv.
...For CGST Authority

The Court: Pursuant to the direction of this Court, petitioner has already deposited the deficit Court fees and files document to this effect which may be kept with the record.

Heard learned advocates appearing for the parties.

By this writ petition petitioner has challenged the impugned order dated 31st October, 2019, passed by the Appellate Authority under relevant provision of West Bengal Goods and Services Tax Act and Rules, 2017.

Considering the submission of the parties and on perusal of the impugned order, I find that the petitioner seeks adjudication by this

Writ Court under Article 226 of the Constitution of India on the issue as to under which Chapter and which classification of the Customs & Central Excise Tariff Act its product will fall and declaration to this effect and it has challenged the findings of the Appellate Authority in its impugned order where it has been held that petitioner's claim on PPSB bed sheet are produced in a finished stage by processing the non-woven fabrics manufactured by the petitioner. It is the findings of the Appellate Authority that petitioner does not consume PP granules directly into the manufacturing of bed sheet instead non-woven fabric in manufacturing for PP granules is used by it which is used in the manufacturing of PPSB bed sheet. Before the Authority concerned the petitioner has declared that its product should be under the classification list in Chapter 63 of Customs Tariff Act and HSN Code 63041930 and the petitioner submitted in its return 5% of GST on its sale. Aforesaid claim of the petitioner has not been accepted by the Appellate Authority by holding that under the Customs and Central Excise Tariff Act articles in question is covered under Chapter 56 to 62 and is not covered under Chapter 63 and it also held that "Non-woven Fabric" and "PSB Bed Sheet" manufactured of non-woven fabric are the same textile fabric and therefore the bed sheet manufactured by the petitioner should be considered in Chapter 56 03 at par with "Non-woven Fabric" and to be taxed at the rate of 12%.

I am of the considered view that this Writ Court in exercise of its Constitution Writ Jurisdiction under Article 226 of the Constitution of

India should not act as an expertise to scrutinise the composition and mode of manufacture of a product like of this nature and do the job of classifying a product as to under which classification list of the Customs Tariff Act such product falls since it requires scientific and technical analysis to be conducted by expertise in such scientific and technical field. In exercise of Constitutional Writ Jurisdiction under Article 226 of the Constitution of India Writ Court should not scrutinise an adjudicating authority's decision itself, by acting as an appellate authority over such order of the authority and substitute the findings of an authority by reappreciating the evidence and material and more particularly the nature of a case like this. Only scientific and technical expertise can give any opinion as to the nature of the material used and method of manufacturing involved in production of the articles in question and after taking into consideration the aforesaid scientific and technical aspect, appropriate Authority under the law can come to a conclusion and make a declaration as to under which heading of the classification list product in question will fall. I am of the considered view that this is not a case where any violation of principles of natural justice has been committed or any procedural irregularity has been committed by the authority in passing the impugned order or violation of any specific statutory provision of law has been committed by the Appellate Authority concerned in passing the impugned order.

In view of the discussion made above, this writ petition being WPO 588 of 2019 is dismissed.

However, considering the prayer made by the petitioner after passing this order seeking liberty to raise the issues in this Writ Petition in future before the Appellate forum or Tribunal when it will be available, such liberty is granted to the petitioner.

(MD. NIZAMUDDIN, J.)

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