



W.P(MD)No.6506 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE S.SRIMATHY

W.P(MD)No.6506 of 2023

and

W.M.P.(MD)No.6159 of 2023

M/s.Way Irrigation Land Scapping,
Rep. by its Proprietor Shri Thangavadivel Senthilkumar,
Plot No.3196, VBN Complex,
Dharapuram Main Road,
Kallimanthaiyam,
Dindigul District.

... Petitioner

vs.

1)The Commissioner of CGST and Central Excise,
Review / TRC Section,
Head Quarters Office,
Madurai.

2.The Assistant Commissioner of CGST and Central Excise,
Dindigul-II Division,
No.5 SI Complex, Race Course Road,
Dindigul.

3.The Superintendent of CGST and Central Excise,
Palani Range, Palani,
Dindigul District.

... Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the second respondent's impugned order of imposing interest and penalty for delayed



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payment of delayed payment of GST in file No.C.No.IV/19/05/2022-GST-
Adjn, dated 27.12.2022 and quash the same.

For Petitioner : Mr.M.Sricharan Rangarajan
Senior Counsel
for Mr.SR.Sureshkumar

For Respondents : Mr.N.Nandakumar
Senior Standing Counsel
Assisted by
Mr.S.Ragavendre
Junior Standing Counsel

ORDER

This Writ Petition is filed for a Writ of Certiorari to quash the impugned order dated 27.12.2022 of the second respondent imposing interest and penalty for delayed payment of GST during the period between July 2017 to March 2020.

2. The petitioner is having agricultural based company, wherein the petitioner purchase and sell agricultural based products and functioning from November 2011 onwards. The company was registered under the Commercial Tax Department, dated 02.11.2011. Earlier, there was a blanket exemption on all agricultural products till June 2017. The Ministry of Finance, Government of India issued a Notification No.2/2017-Central Tax

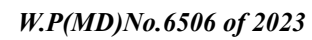


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(Rate), dated 28.06.2017, grant exemption of intra-state supplies of the specified goods from the whole of the central tax leviable thereon. Pursuant to the said notification, the petitioner was exempted from payment of tax in terms of Entry 88 in the above said Notification in column (3) of Description of Goods, specified as “Plants and parts of plants (including seeds and fruits) of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, fresh or chilled”. A medicine based plant by name of “Gloriosa Superba” otherwise called as Karthigai Flower is used for traditional medicine in many cultures and has international market. It is an anthelmintic and has been used as a laxative and an alexiteric. The petitioner company is purchasing the seeds from the farmers, companies and selling it to main dealers, in short mainly trading the said “Gloriosa Superba Seed”.

3. The contention of the petitioner is that the said seed is exempted from tax as per the aforesaid notification, dated 28.06.2017. But in view of the wrong guidance and without verifying the said notification the company paid the GST tax to the respondents. In the meanwhile, the respondents issued show cause notice dated 27.05.2022 for non-payment of interest on delayed payment of GST for the said Karthigai Flower for the period from 01.07.2017 to 12.10.2017. Subsequently, the petitioner received the



4. The respondents have filed counter affidavit stating that the petitioner's company was selected for statutory audit and the impugned demands were on the basis of the objections raised by the department audit party. The said objection was communicated to the petitioner and a copy of the objection was also furnished. The petitioner has mentioned that their product is falling under Entry 88 of the Notification No.2/2017-Central Tax (Rate) dated 28.06.2017. But actually, the petitioner was engaged in supply of “Glorisa Superba Seed” and the same is classified under Chapter 12119019 of GST Tariff as “Plants and parts of plants (including seeds and fruits)”, of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, fresh, chilled, frozen or dried, whether or not cut, crushed or powdered” which attracts 5 % IGST or 2.5 % CGST + 2.5% SGST/UTGST under Notification No.1/2017-Central Tax



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(Rate) dated 28.06.2017. The petitioner has mentioned that the product was exempted under Notification No.2/2017-Central Tax (Rate), but the petitioner engaged in supply of “Gloriosa Superba Seed” and the same is classified under Chapter 12119019 of GST Tariff, which attracts 5% GST. The impugned product actually falls under S.No.73 of Schedule I of Notification No.1/2017 Central Tax (Rate) and the same is extracted hereunder:

**Schedule I-2.5% [of the Notification No.1/2017 Central Tax (Rate)
dated 28.06.2017]**

S.No.	Chapter/Heading /Sub-heading/Tariff Item	Description of Goods
73	1211	Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, frozen or dried, whether or not cut, crushed or powdered.

Moreover, the petitioner has actually collected GST and paid the same also. The petitioner has not replied to the Show Cause Notice and has not attended the personal hearing, now the petitioner cannot claim any relief in this writ petition. If the petitioner is aggrieved then the petitioner is having alternative remedy to prefer appeal and prayed to dismiss the writ petition.



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5. After hearing the rival submissions this Court has given its anxious consideration. The claim of the petitioner is that the “Gloriosa Superba Seed” comes under entry 88 in the Notification No.2 dated 28.06.2017 and exemption is granted for the said seed. But the claim of the respondents is that the said “Gloriosa Superba Seed” comes under entry 73 in the Notification No.1 dated 28.06.2017 and the same is levied tax of 5%. Even though the respondents have filed a counter affidavit elaborately stating about the Notification No.1 and 2, the impugned order there is no mention about the said Notifications 1 and 2 at all. The issue raised is one that of classification, but the same has not been dealt with the impugned order at all. Even in the impugned order it has been stated under the heading “Findings and Discussion”, in paragraph 10, the respondents have stated,

“The facts of the case are clearly brought out in the subject SCN dated 27.05.2022 along with necessary evidence and with provisions- Grounds / Quantification of Tax / details of the non-payment of the goods / Documents and conditions for claiming ITC and contraventions – necessary rules / section etc., therein”

From this it is evident that the respondents have not dealt with the classification issue at all. The real issue raised by the petitioner is the classification and applicability of Notification No.2. In the entire impugned



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order there is no whisper about the issue of classification and the applicability of Notification No.2. The elaborate narration about the Notification No.1 and 2 in the counter affidavit cannot be taken into account, since that is not reflecting in the impugned order. Therefore, this Court is of the considered opinion that the claim of the petitioner ought to be considered by the respondents. Therefore, the impugned order is liable to be quashed.

6. The Learned Counsel appearing for the respondents submitted that the petitioner is having alternative remedy of filing statutory appeal. But the Learned Senior Counsel appearing for the petitioner submitted that the respondents have not granted sufficient opportunity and relied on the impugned order wherein it is stated that personal hearing opportunities was granted on 06.09.2022, 08.09.2022 and 09.09.2022 vide letter dated 29.08.2022, 06.12.2022 vide letter dated 29.12.2022 and 12.12.2022 vide letter dated 29.11.2022. It is impossible to attend the hearing on 06.12.2022 when the notice dated 29.12.2022 was issued. However the Learned Counsel appearing for the respondents strongly opposed this plea and produced the hearing sheet to substantiate that opportunity was granted and the petitioner attended the hearing on 06.09.2022. Even according to the petitioner he had attended the PH on 06.09.2022 and sought time to file



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written submission. After considering the above submission it is seen that the date of the order is 27.12.2022, which means the order is passed even prior to the hearing notice dated 29.12.2022. Therefore this Court is of the considered opinion that the petitioner deserves opportunity, since effective opportunity was not granted to the petitioner. Therefore, the impugned order is liable to be quashed and hence, the impugned order is quashed.

7. The learned counsel appearing for the respondents submitted that atleast the petitioner may be directed to pay the part of the amount quantified. Since the petitioner had already paid the GST liability, the impugned order is passed for interest and penalty coupled with the fact that the question of applicability of exemption is raised, this Court decline the plea of the respondents.

8. The petitioner shall submit reply to the show cause notice within a period of six weeks from the date of receipt of the copy of the order. Then the respondents shall grant personally hearing to the petitioner. Thereafter, the respondents shall conclude the assessment, within a period of four months thereafter.



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9. With the above observations and direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

20.07.2023

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NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

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